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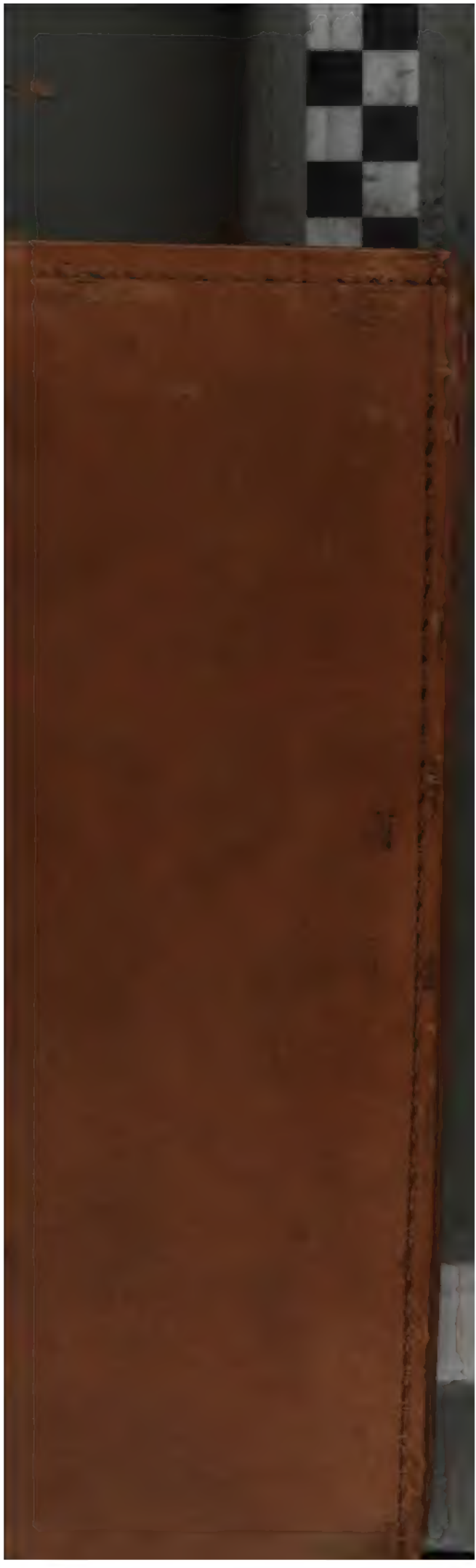

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1938

1938

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

FIRST AND SECOND SESSIONS OF THE FORTY-SIXTH CONGRESS,

1879-'80.

IN SIX VOLUMES.

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Barnhard, William	4	1
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Bird, Francis H	1	
Black, John H	1	
Blundin, Lewis	2	
Boll, Caroline	1	
Boreland, James M	1	
Bowman, William	1	
Bryant, William	1	
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Boggs, Robert P	3	
Boll, Caroline	1	
Boone, Samuel M	4	1
Boreland, James M	1	
Bothner, Dorothea	5	1
Botts, Wyatt	2	
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Bowers, Joseph	2	
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Hopper, John	5	1684	
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Hooper, Abner	1	71	
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Hudson, Eliza	3	773	
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Hutchinson, David G	5	1541	
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Irving, Arthur W	5	1547	
Jack, Albert L	1	111	
Jackson, David C	4	1166	
Jackson, John H	3	853	
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Jackson, Thomas J	1	84	
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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1521.

ECLIPSE COTTON GIN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. AIKEN, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 5375.]

The Committee on Patents, to whom was referred bill H. R. 5375, beg leave to submit the following report:

This bill is for the relief of George Washington Payne, the surviving member of the firm of G. W. Payne & Co. (the company being James Newton Wilson, deceased), to whom were granted in April, 1858, a patent or letters patent upon an improvement in the cotton gin, known as the Eclipse gin, for the term of fourteen years, and extended in 1872 for a period of seven years longer, the extension expiring 27th day of April, 1880.

The petition and affidavits accompanying this bill establish the following facts, to wit:

The petitioner is and was an humble mechanic, dependent upon his daily labor for his support; that in 1864 his shop was burned by accident, and though insured in the Sun Mutual Insurance Company of Chicago, he was never paid a cent of insurance by reason of failure of said company; that in 1873 the manufactory, with its contents, of tools, machinery, and ten completed gins, was burned, and was a total loss; that this burning was proven to be the work of an incendiary, who is now a convict in the penitentiary of the State of Tennessee; that in 1876, by reason of a conflagration not originating in the building of the petitioner, his re-erected premises were burned a third time, and though insured in the Globe Insurance Company of Chicago, he never received anything from said company, which went into liquidation about that time; and that the firm nor the surviving partner have ever realized a cent from their patent, which is acknowledged by planters to be invaluable.

For these reasons, and from the additional fact that manufacturers of cotton gins, to whom this application for an extension of this patent has been made known, have expressed their assent to its extension, your committee recommend that the prayer of the petitioner be granted, and that the bill do pass.

49TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1522.

WILLIAM HENRY WARD.

MAY 21, 1890.—Laid on the table and ordered to be printed.

Mr. WARD, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 3311.]

The Committee on Patents have duly considered the above bill, and fail to find sufficient evidence to show that the Government of the United States had derived any benefit from the inventions of the claimant, or that he had any authority from government officers to introduce the same. Further, that if any claim existed by virtue of any contract, express or implied, it should have been presented before the Court of Claims before the statute of limitations operated as a bar; and there does not appear to the committee any peculiarly equitable circumstances in this case to remove the bar by special enactment.

They therefore report back the bill with an adverse recommendation.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1523.

ANNA A. PROBERT.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4739.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4739) granting a pension to Mrs. Anna A. Probert, have considered the same, and report:

The said Anna A. Probert is the widow of George C. Probert, who was first lieutenant in Third Ohio Cavalry, and who contracted disability while in the military service of the United States, and to whom was issued pension certificate No. 94786, under which he received a pension at the rate of $17 per month till his death, October 28, 1878.

Claimant's husband was a druggist and a resident of the State of Ohio. A short time before his death he went to the city of Memphis for the purpose of giving his professional assistance to the yellow fever sufferers of that city during the yellow fever epidemic that devastated that city during that season.

While in the city of Memphis Lieutenant Probert was attacked with yellow fever, and died October 28, 1878. The attending physician certifies that in all probability he would have recovered if the disease had not been aggravated by chronic intestinal disease which had been contracted in the United States Army.

Governor Bishop, of Ohio, states that the claimant is a very deserving person, and has to support two small children, issue of her marriage with said officer.

In view of all the facts, and the peculiar circumstances attending this case, the committee feel warranted in reporting the bill back to the House with a recommendation that it do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1524.

C. K. HUGHES.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5586.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5586) granting a pension to C. K. Hughes, have considered the same, and report:

The said Hughes was enrolled as captain of Company I, One hundred and forty-third Regiment Pennsylvania Volunteers, on the 18th day of October, 1862, and continued to serve in that capacity till the 18th day of October, 1864, when he was promoted to major of said regiment, and remained in said position till his honorable discharge, June 12, 1865. Hughes applied for pension in May, 1877, alleging that while in the service and in line of duty at the battle of Gettysburg, Pa., July 3, 1863, he received a grape-shot wound of left foot, and afterwards at the battle of Cold Harbor, Va., he received a shell wound on left side of the head, and that he contracted piles in the service, and that the disability resulting from said wounds and disease is permanent, and unfits him for obtaining his subsistence by manual labor. He also states that after the receipt of the wound at Gettysburg he was sent home on leave, and while there was treated by Dr. Barrett, who is now dead; and that after his discharge he was treated for piles by Dr. Thompson, whose whereabouts is to him unknown, and that the only officer—Captain Platz—who had personal knowledge of the existence of piles is now dead.

The report of the Adjutant-General shows that claimant was wounded at the battles of Gettysburg and Cold Harbor, and that he was treated in the hospital for the wound received at the latter place.

Capt. O. K. Moon testifies that claimant was wounded at the battle of Gettysburg, Pa., July 3, 1863.

Albert Earl, late private Company I, One hundred and forty-third Pennsylvania Volunteers, testifies to the wound of foot and head.

E. S. Osborne testifies that claimant was wounded at Cold Harbor.

Dr. Charles A. Wilson testifies that he treated claimant at the field hospital of the first division, Sixth Army Corps, at Cold Harbor, for wound on head.

Dr. J. F. Chapin testifies that he was claimant's family physician before the war, and that he was then free from piles.

A petition, signed by thirty-six of the leading citizens of Columbia County, Pennsylvania, *states that prior to claimant's* enlistment in the

Army he was a stout, able-bodied man, and that since from the service his health has been completely broken d he is unable to obtain his subsistence by manual labor. T that claimant is a man of excellent habits, and a deservin

The claim was rejected because, in the opinion of the of Pensions, the disability was not due to claimant's Arm

The committee think claimant has shown right to pensi mend that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1525.

FRANKLIN PILE.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3086.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3086) granting a pension to Franklin Pile, have considered the same, and report:

It appears that the said Pile was a private of Company G, Sixty-first Regiment Pennsylvania Volunteers. It further appears that while in said service the soldier was attacked with a disease called jaundice, and also with rheumatism, which diseases permanently disabled him.

To the above facts affidavit is made by Cyrus Shulis, a comrade of Pile in the service, Petter Pretts, and Hiram Pile.

Dr. Henry Bruboker states that he has attended the claimant for several years immediately succeeding his discharge; that he suffered from chronic rheumatism and dyspepsia, and at times from great mental depression, which eventually terminated in insanity in the year 1874, from which he slowly rallied, but that his mind is exceedingly weak, and that he has no doubt but that and his present condition was occasioned by his Army service; and he further states that the claimant is deserving and in a deplorable condition.

In view of all the testimony, the committee report the bill back to the House, with a recommendation that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1526.

JAMES NEWBERRY.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3081.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3081) granting a pension to James Newberry, have considered the same, and report:

The said Newberry is now eighty-four years of age. He served the Government of the United States during three wars. He was a member of the "Cumberland Blues" for two years during the war of 1812. He served for one year as a private in the Second Pennsylvania Regiment in the war with Mexico. He was a private in Company F, Eighty-fourth Regiment Pennsylvania Volunteers, from September, 1861, till discharged in June, 1862, on account of old age and loss of sight. Afterward he enlisted as a private in Company B, Eighty-first Pennsylvania Volunteers, and served in that capacity from August 22, 1864, till discharged, June 1, 1865.

He claims to have been seriously injured by a fall from his horse during his last service, but states that he is unable to adduce testimony in support of his allegation because the surgeon of his regiment is dead.

The committee think, in view of the fact that claimant is the hero of three wars, his great age, his fervid patriotism and his present helpless condition, physically and financially, and the further fact that death will soon overtake him, that he should be pensioned, and we therefore recommend that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1527.

E. MAZELL.

MAY 21, 1880.—Committed to the Committee of the whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following:

REPORT:

[To accompany bill H. R. 4394.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4394) restoring to the pension roll the name of Elizabeth Mazell, have considered the same, and report:

The said Elizabeth Mazell is the widow of Martin Mazell, late private in Company F, One hundred and twelfth Pennsylvania Volunteers.

Claimant's husband was in said service for three years, and after his discharge applied for pension, alleging that he contracted the disease of dropsy in the service. In support of his allegations he adduced a great mass of testimony, all of which corroborated his statements and which was satisfactory to the then Commissioner of Pensions, and he was placed on the pension-roll, and pension certificate No. 62186 issued to him and he received pension under said certificate till his death from said disease in the year 1864.

The claimant applied for and was pensioned as his widow, and she continued to receive said pension till April 6, 1866, when she was dropped from the pension roll upon the report of a special agent of the Pension Office who reported that claimant's husband lost his health from intemperance, and filed in support of that statement the affidavits of Capt. W. M. McClure, Sergeant Jonathan P. Bon, George. W. Webb, John M. Marshall, R. W. Eggert, D. H. Smith, E. Thatcher, and John M. McClure.

Claimant now adduces affidavits of Edward Thatcher, John M. McClure, Thomas McGill, Jonathan P. Bon, D. H. Smith, and John M. Marshall, who swear they made no such statement to the special agent.

In view of the fact that claimant's husband made out an exceptionally strong case for pension originally, and the further fact that he was dead at the time said special agent made his secret examination or investigation of his case, and also the fact that many of the witnesses purported to have been examined by said special agent deny having made said statement, and not losing sight of the fact that this soldier served in the army for more than three years and died about the close of the war of the rebellion, and that it is unquestioned that he contracted dropsy and hydrocele in said service, we think the Pension Office erred in dropping claimant's name from said roll, and we report the bill back to the House with a recommendation that it do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1528.

MARIAH BETTS.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5864.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5864) granting a pension to Mariah Betts, have considered the same, and report:

The said Mariah Betts is the widow of George W. Betts, who was a scout in the United States service during the late war. He served in Virginia, Kentucky, and Missouri. There is in the papers the testimony of General Burbridge, who states that said George W. Betts was a scout under his command, and that while in line of duty he received a wound, and that he had him sent home on that account. An affidavit of claimant's husband before his death details the long service he rendered in Virginia and Kentucky and Missouri, and asserts that he received several wounds in the service, one of which affected his brain, the wound being on the head. He also asserts that he contracted diarrhœa in the service.

A neighbor testifies that he was sound when he entered the United States Army, but that upon his discharge his health was impaired by reason of diarrhœa.

Dr. L. Burns states that he had treated claimant's husband for diarrhœa from the time of discharge till 1879.

The committee think this a meritorious case, and recommend the passage of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1529.

HANNAH M. WRIGHT.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1328.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1328) granting a pension to Hannah M. Wright, have considered the same, and report:

The said Hannah M. Wright is the widow of Brevet Brig. Gen. Joseph J. B. Wright, late a colonel and surgeon in the United States Army. The said General Wright was appointed assistant surgeon of the United States Army in 1833, promoted to major and surgeon in 1844, promoted to colonel and surgeon in 1876, and was retired in December of that year, and died in the month of May, 1878, leaving the claimant as his widow, without adequate means of support.

Claimant's husband was in the said service for more than forty-three years, and during that time discharged his duty faithfully as well as skillfully, as is attested by his brevet rank.

There is herewith appended the military history of General Wright furnished the committee by the Adjutant General of the United States Army.

In view of the long and faithful services of claimant's husband, her age, and the fact that her means of support are very slender, and in view of the further fact that there are numerous precedents for such action, the committee are of opinion that claimant should be pensioned, and report the bill back to the House with a recommendation that it do pass.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, December 3, 1878.

Military history of Joseph J. B. Wright, late of the United States Army, as shown by the files of this office.

Appointed assistant surgeon, October, 25, 1833; major and surgeon, March 26, 1844; colonel and surgeon, July 26, 1876; retired, December 31, 1876.

Service.—On duty at Fort Gibson, Ind. Ter., from appointment to March, 1835; at Camp Des Moines, Iowa, to December, 1835; at Fort Howard, Wis., to May, 1837; awaiting orders to August 19, 1837; on duty at Fort Snelling, Minn., to October, 1838; at Jefferson Barracks, Mo., to May, 1839; at Carlisle Barracks, Pa., to March, 1840; in the field, Florida (Seminole Indian war), to September, 1841; on duty with First Infantry, *en route* to Prairie du Chien, *to January, 1842;* in the field, Florida, (Seminole Indian war), *to March, 1843; on leave of absence* to May 10, 1843, member of

Army medical board, New York City, to August, 1843; on duty at Washington, D. C., to September, 1843; at Plattsburg Barracks, N. Y., to June, 1844; at Fort Marion, Fla., to August, 1845; with Eighth Infantry in the occupation of Texas to August, 1846; in the war with Mexico to May, 1848; at New Orleans, La., to June, 1848; at Military Academy, West Point, N. Y., from June 20 to December 12, 1848; *en route* to and on duty at San Antonio, Tex., to June 1, 1852; at Carlisle Barracks, Pa., to April, 1857; with troops in the field quelling Kansas disturbances to November, 1857; at Saint Louis, Mo., to February, 1858; on duty at Fort Leavenworth, Kans.; with troops for Utah expedition to July, 1858; at Saint Louis, Mo., to August, 1858; awaiting orders at Carlisle Barracks, Pa., to October, 1858; on duty at Baton Rouge, La., to April 23, 1859; at Fort Leavenworth, Kans., to April, 1861; medical director, Department of Ohio, to September, 1861; medical director, Department of Missouri, to April, 1862; awaiting orders to June, 1862; on duty at Carlisle Barracks, Pa., from June 27, 1862, to December 31, 1876; when having served faithfully until over sixty-two years of age, embracing forty-three years' service in the medical department, he was, by direction of the President, retired from active service (as colonel, United States Army), in conformity with section 1244, Revised Statutes.

The records of this office furnish no evidence of sickness or disability while on duty in the medical department.

He is reported to have died of apoplexy, May 14, 1878, at Carlisle, Pa.

E. D. TOWNSEND,
Adjutant-General.

To Maj. J. W. BARINGER, U. S. A.,
For Commissioner of Pensions.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1530.

GEORGE OGLINE.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3083.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3083) granting a pension to George Ogline, have considered the same, and report:

The said Ogline was a private in Company E, One Hundred and Seventy-first Regiment, Pennsylvania Volunteers, from the 25th October, 1862, till 7th August, 1863. He applied for pension in the year 1869, alleging that while in the service and in line of duty he was attacked with epilepsy, and in support of his allegation presented a great mass of testimony, including that of his commissioned officers, several of his comrades, and neighbors, and physicians, all of whom sustained the allegations of claimant.

Upon the testimony the Pension Office granted him a pension at the rate of $8 per month, which was afterward increased to $24 per month.

The claimant was afterward dropped from the pension roll, and we find nothing in the papers to warrant such action in dropping him. The papers submitted to the committee, including those forwarded to it by the Pension Office, show that this claimant is both legally and equitably entitled to his pension, and we recommend the passage of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1531.

ABRAHAM HOWARD.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3089.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3089) granting a pension to Abraham Howard, have considered the same, and report:

The said Howard was a private in Company C, Fifty-second Regiment Pennsylvania Volunteers, from 26th September, 1864, till 23d June, 1865. He contracted rheumatism while in said service, and in line of duty near Salisbury, N. C., in December, 1864, by reason of exposure and sleeping on the wet ground; that said disease affected his back, hips, and legs; that he still suffers from said disease and is one-half incapacitated from performing manual labor by reason of his said disability. There is no record of his said disability in the War Department and for that reason he did not apply at the Pension Office for relief.

David Gardner testifies that he is a neighbor of Howard, and that at the time of his enlistment claimant was a man of sound physical health and free from rheumatism; that since his discharge claimant has suffered continuously with said disease, and is thereby one-half incapacitated from performing manual labor.

Henry Burboker, M. D., testifies that he has treated claimant for said disease since his discharge.

Jacob Showman testifies that he was a comrade of claimant in the service and that he knows, of his personal knowledge, that claimant contracted the disease of rheumatism in the service and in line of duty December, 1864, by exposure to wet and rain, and that his back, hips, and legs are thereby affected.

The committee, in view of this testimony, recommend the passage of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1532.

JOHN A. LONDON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2344.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2344) granting a pension to John A. London, have considered the same, and report:

The said John A. London volunteered as a private in Company A, Twelfth Regiment Kentucky Cavalry, and as such went into camp with said organization at Owensborough, Ky., in September, 1862.

Before said regiment was mustered into the United States service the camp at Owensborough was attacked by the Confederate forces, and its colonel (Netter) killed, and the said London severely wounded in the breast and shoulder by a gunshot wound.

Claimant alleges that he was sent home to Butler County, Kentucky; that he was never mustered into the service; that he never received any bounty or pay or pension, and that he is permanently disabled by reason of his said wound, and cannot acquire a subsistence by manual labor on that account. He was only prevented being mustered as a member of said command on account of the said wound.

A. G. Hamilton testifies that he was captain in said regiment, and he makes the same statement as the claimant in regard to claimant's service and his wound as is made in the petition of claimant for relief. His statements are confirmed in every particular by the testimony of M. P. Gott, first lieutenant in said command.

There can be no question that claimant was wounded while in the United States military service, and in the opinion of the committee is equitably entitled to pension. We therefore report the bill back with a recommendation that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1533.

JOHN WATSON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2919.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2919) granting a pension to John Watson, have considered the same, and report:

It appears that the said Watson was a corporal in Company D, Thirty-third Regiment Kentucky Volunteers, from September 13, 1862, till discharged under surgeon's certificate of disability March 30, 1863. Said certificate states that claimant was, at its date, unable to perform military duty "on account of rupture, which he had very slightly when enlisted, but by cold contracted in the line of duty and coughing excessively has increased to such degree as to entirely unfit him for service."

There are in the papers affidavits of Drs. D. P. White, B. B. Scott, and W. P. White, touching claimant's present condition, in all of which it is stated that claimant is laboring under complete physical disability occasioned by double hernia.

William S. Warren, a comrade of claimant's in the service, testifies that he had known him for sixteen years; that he messed with him and slept with him in said service; that at the time of enlistment claimant was free from rupture, so far as affiant knew; that he was noted throughout the command for his extraordinary strength and agility; and he states further that his present disability was the result of his Army service.

There are several affidavits of claimant's comrades in the service and his neighbors, all of which contain the statement that the claimant prior to and at the time of his enlistment, and during the greater period of his service, was a man noted in the command and throughout the neighborhood of his residence for extraordinarily robust health and great strength and agility. The evidence upon this point is cumulative, and the committee cannot doubt it, and the evidence is just as strong that after his discharge he has been completely broken in health, and that his hernia cannot be controlled even with a truss.

The claim was rejected because of the clause in the certificate of disability, under which he was discharged, containing the statement that claimant was slightly affected with hernia before enlistment. In the opinion of the committee the evidence adduced by claimant overcomes that record. The government *accepted his service*, enrolled him in its

Army, and in equity, at least, is estopped to deny that he wa
perform said service when he entered upon the discharge of i
If the soldier was unsound when enrolled, it was the fault of th
ment's agent that he was accepted to perform a duty for whic
unfit.

It is the opinion of the committee that this claim is just and e
if not legal, and we recommend that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1534.

JOHN S. DYE.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3618.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3618) granting a pension to John S. Dye, have considered the same, and report:

The said Dye was enrolled as a private in Company I, Fourteenth United States Infantry, 13th July, 1869, and was discharged said service under surgeon's certificate of disability in September, 1869. He applied for and was granted a pension at $8 per month from 26th September, 1869, for heart disease, which was increased to $15 from April 1, 1871, and $18 June 4, 1872.

Special Agent of the Pension Office Wager notified the Pension Bureau that Dye was drawing his pension fraudulently, and Arthur Shepherd, special agent of the Pension Office, was directed to investigate the claim. He examined a great number of witnesses, many of whom appeared to be very zealous and swift in testifying against the claimant, who was excluded from the investigation. Every one of the witnesses so examined, save two, testified that the claimant was afflicted with heart disease before his enlistment. The two who fail to make that statement are physicians; the others are all unprofessional persons. All the witnesses testify that the claimant is addicted to the too free use of spirituous liquors, and spends a large portion of his pension in satisfying the cravings of his appetite.

In the papers is the certificate of the regimental surgeon, stating that he examined the claimant when enlisted, and that he was at that time a thoroughly sound man, and fit for duty as a soldier; and the surgeon adds, that Dye contracted "typho-malarial fever in line of duty, from which he is $\frac{4}{4}$ disabled."

The committee are of opinion that claimant's disability is incident to and consequent upon his service in the United States Army, and that he was properly pensioned therefor. The committee is not aware of any law that authorizes the Commissioner of Pensions to drop a name from the pension-roll because it appears from the report of a special agent that the soldier is imprudent and intemperate in his habits. It does not appear that the drinking of claimant aggravates or enhances his disability; but it does appear that he was advised by a physician to use spirits as a palliative of his disease.

We are of opinion that this soldier was wrongfully dropped from the pension-roll, and recommend that the bill do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1535.

MARIA C. WORTHINGTON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6258.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4815) granting a pension to Maria C. Worthington, have considered the same and report:

The said Maria C. Worthington is the widow of U. B. Worthington, who was killed in action at Augusta, Ky., on the 27th day of September, 1862. The circumstances of his death were about as follows:

At the time above stated the Confederate forces, under command of Gen. Jno. H. Morgan, invaded the State of Kentucky, and a portion of the said forces attacked the town of Augusta, which was defended by a small force, under command of one Bradford, who was recruiting a regiment for the United States Army.

The husband of claimant was a citizen of Bracken County, Kentucky, and resided near said town of Augusta, and he was impressed into the United States service by Bradford and made to assist in the defense of the town, in performing which duty he lost his life in the engagement which followed.

The claimant never applied for pension, as she was not entitled to it under existing law. The evidence shows that she is in reduced circumstances and has been since the death of her husband, and as her husband lost his life in the military service of the United States, though not regularly enrolled therein, equity demands that the prayer be granted, and we recommend the passage of the accompanying substitute for the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1536.

SAMUEL M. BOONE.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6259.]

The Committee on Invalid Pensions, to whom was referred the petition of Samuel M. Boone, praying that a pension be granted him, have had the same under consideration, and report:

The said Samuel M. Boone was enlisted as a member of Company D, First Regiment Kentucky Cavalry, on the 5th day of August, 1861, and promoted to captain of said company December 2, 1862, and discharged August 12, 1863.

On the 6th day of June, 1866, he filed his declaration for pension, alleging that while in the service and in line of duty on the 27th of December, 1862, at Gallatin, Tenn., while riding to give orders to his pickets, his horse became unmanageable, "squared" himself, and kicked him in the breast and on the right arm, fracturing, breaking, and splitting the bones of his arm in a terrible and severe manner.

Claimant also states that he was not treated in any general hospital for the injury. He also alleges that his resignation was accompanied by a surgeon's certificate of disability, showing that by reason of his said injuries he was unfitted for military duty.

Hawkins Brown testifies that he was surgeon of said regiment. That on or about December 19, 1862, near Gallatin, Tenn., claimant was rendered unfit for military duty by injuries received from a kick of his horse, which broke his right arm and split the bones thereof; that said injury was received in line of duty, and that it was on that account that claimant was relieved from his service in the Army.

A. G. Hoffman, assistant regimental surgeon of said command, states that he concurs in the testimony of Surgeon Brown.

Drs. G. D. Buckner and R. F. Hood testify that they examined claimant in October, 1866, and found him suffering with an injury to his right arm near the elbow joint; that there has been a compound fracture of the ulna with probably an injury to the ulna nerve, causing partial paralysis of the hand and forearm, which unfits him for the performance of manual labor.

The declaration and the above testimony were all filed during the year 1866.

The record in the War Department shows that there is indorsed on the discharge "for the good of the service," and the Pension Office inferred from that indorsement that the claimant was dishonorably discharged.

The papers on file with the committee show that the claim
jected under section 4717, Revised Statutes, which bars it by
time, five years having elapsed from the filing of the claim
was prosecuted to successful issue.

There is indorsed on one of the papers a statement of one of th
of the Pension Office, from which it appears that claimant insti
suit at law in some court in Kentucky against an incorporated
injuries alleged to have been received in 1872 from having fal
some excavation in the street, or something of the kind, and
injury he claimed to have received by that accident correspond
the injury described in his declaration.

In his petition claimant bitterly denies that he was dishonora
charged the service. He states that at the time his resignation
cepted all such resignations were indorsed "for the good of the s
and that all the indorsement was intended to express was that
unfit for military duty by reason of his said injuries received in
duty. As for the indorsement by the clerk, it shows that the sa
if any such was ever pending in Kentucky, was instituted in 1
years after the application for pension was made. It is unverifi
supported by no proof.

The First Kentucky Cavalry was commanded by Col. Frank Wo
it was one of the best regiments in the service, and perhaps partic
in more engagements than any other regiment in the late war.

In the opinion of the committee this claimant has shown stro
sons why he should be pensioned, and we think equity would affo
relief he seeks.

We therefore recommend the passage of the accompanying bill.

the island (as prisoner) and saw his stomach, and knew he was si disabled, and was with him from that time till his discharge; a ther, he is unable to perform manual labor. He contracted his d when a prisoner, from want of proper food, and from exposure w prison on Belle Island, Va.; was taken prisoner in August, 1863, site Fredericksburgh, Va. Comrade Robert G. Dilley confirm statement.

Claimant states that he was unable to find any of the officers c geon of his regiment; not treated in any hospital, nor for said d while in the Army.

L. E. Wickens, M. D., of Oakland County, Michigan, (filed 9th 1874) says:

I am a practicing physician at the village of Holly, said county, and have b twelve years; I have known Stephen W. Thompson twenty years, and have b family physician nine years, and was well acquainted with him before he went i Army, and since his discharge. I have frequently examined him, and I find th lower end of the sternum is depressed so as to affect the stomach and lungs, a depression increases gradually and constantly, so that manual labor of an activ is impracticable; that prior to his entry into the service he was a man of good, physical health, and that he is now almost wholly disabled from obtaining h sistence from manual labor in consequence of his above-named injuries recei the service of the United States; and that the disease has not been nor is it n gravated or prolonged by intemperance or other bad habits; and further th said disease was contracted during the time he was in said service from a l proper diet, or some other cause.

The Surgeon-General reports: "Diarrhea; and was returned to March 8, 1864."

The examining surgeon of the Pension Office at Ludington, M County, Michigan, December 2, 1874, in his certificate, says:

In my opinion said Stephen W. Thompson is one-half incapacitated. The disa is permanent in its present degree. There is a depression of the lower extrem the sternum, and the ensiform cartilages, six inches in diameter and two in d making respiration painful on slight exertion, and causing pain in the stomach meals during digestion.

Your committee are of the opinion that the petitioner became abled from the disease, as claimed by him, while in the military ser of the government; that he has been treated and suffered from disease since his discharge, and that he should be pensioned accor to the rating of the examining surgeon of the Pension Office; th fore, your committee report favorably upon his prayer, and recomm the passage of the bill (H. R. 3529) granting a pension to Stephen Thompson.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1538.

ALFRED G. FIFIELD.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FARR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3297.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3297) granting an increase of pension to Alfred G. Fifield, having had the same under consideration, beg leave to submit the following report:

There is filed with your committee a statement from the petitioner, a number of affidavits from citizens of the State of New Hampshire corroborating petitioner's statement, also the papers in the case from the files of the Pension Office.

The claimant was a private in Company C, Twelfth New Hampshire Volunteers; enlisted August 17, 1862; discharged November 17, 1863, on surgeon's certificate of disability, "on account of gunshot wound at Chancellorsville, Va., which caused a resection of the humerus (right arm)."

In the Pension Office—

The claim was originally allowed at $5.33 per month from date of soldier's discharge November 17, 1863. His pension was increased to $8 per month from September 4, 1865; to $15 from June 6, 1866; and to $18 from June 4, 1872. His subsequent applications for increase have been rejected because his disability is not such as would entitle him to the next highest rate provided by the pension laws—$24 per month. It is conceded that the injury to the arm is equivalent to actual loss of the same, above the elbow, but the rate of $24 per month, which the law provides for such loss, is not provided for a disability equivalent thereto, and unless a person is otherwise so disabled as to be incapacitated for the performance of any manual labor, no higher rate than $18 per month can be allowed. (Extract from letter of Hon. J. A. Bentley, Commissioner of Pensions, transmitting the papers to the committee.)

We submit full extracts from the medical evidence in the case, which is voluminous.

Dr. Ira A. Chase, at biennial examination September 4, 1865, certifies—

The arm is entirely useless; should be increased to full pension.

Dr. David B. Nelson, examining surgeon, February 1, 1864, certifies—

The arm is helpless and useless.

Dr. Chase, again, August 7, 1876, certifies—

The right arm is entirely useless, the head and four inches of the right humerus is gone, and the arm hangs dangling by his side; he could not dress or undress himself if both were like the injured arm, and amounts to total loss of right arm.

Again, the same physician says—

The arm is in the way of laboring; *in my opinion* the pension should be increased to full pension.

The board of examining surgeons at Concord, N. H., Se 1875, certify—

Disability is permanent, at total third grade, or $18 per month.

Dr. D. B. Nelson, examining surgeon at Laconia, Februar certifies—

This disability is fully tantamount to the loss of the arm above the elb bility, second grade—$24 per month.

The board of examining surgeons at Concord, N. H., January certify—

He cannot perform any manual labor, nor is this rating in any way cons equivalent to the loss of an arm above the elbow. Disability total; seco or $24 per month.

Warren W. Sleeper, M. D., examining surgeon, January 9, 1 tifies—

Total; second grade, or $24 per month.

G. P. Conn, M. D., for the board of examining surgeons Con H., February 1, 1877, in reply to a letter of instructions from tl cal referee of the Pension Office, says—

* * * He was rated at $24 per month. The board would further state th ant is so far debilitated that the other arm is incapacitated for other than lightest of duty; he being able only to canvass for the sale of a book, for a l

After the receipt of this letter the medical referee still says, "I I cannot change action of rejection."

The affidavits of neighbors and friends of the petitioner, ref in the beginning of this report, are quite as strong as the med dence. They testify to his inability to perform manual labor, an correct habits of life, and urge upon Congress the increase of pe

Your committee are of the opinion that, judged alone on its from the weight of medical evidence in the case, the petitione titled to the relief prayed for, and therefore report favorably u case, and recommend the passage of the bill (H. R. 3297) gran increase of pension to Alfred G. Fifield.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1539.

WILLIAM KELLY.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FARR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3243.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3243) granting an increase of pension to William Kelly, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case, in the Pension Office, that the said William Kelly was a first lieutenant of Company D, Fifty-ninth New York Volunteers, with the following military record in the Adjutant-General's Office, War Department:

Mustered into service as a private on the 2d day of August, 1861, at Staten Island, in Company A, Fifty-ninth Regiment New York Volunteers, to serve three years or during the war. On the muster rolls of Company A of that regiment, from enrollment to 31st December, 1862, he is reported present. Promoted to company sergeant January 11, 1863, and borne on rolls of F. and S. to April 30, 1863, present; May and June, 1863, absent, sick in hospital; July and August, 1863, and September and October, 1863, present; November and December, 1863, absent, recruiting service New York City, since December 11, 1863; January and February, 1864, present; March and April, 1864, promoted to second lieutenant. He was discharged, to date April 19, 1864, for promotion to second lieutenant, Company C, same regiment. Mustered into service as a first lieutenant on the 20th day of June, 1864, at Stevensburg, Va., Company D, same regiment. On the muster roll of said company for the months of May and June, 1864, he is reported "absent, wounded June 22, '64." The muster roll for September and October, 1864, reports him "honorably discharged on account of physical disability by Special Orders 360, War Department, October 22, 1864."

The action of the Pension Office in the case is as follows:

Pensioned from October 22, 1864, at $17 per month, for gunshot wound of left elbow; dropped by reason of re-enlistment; renewed at $17 from March 6, 1868; dropped under section 4719 Revised Statutes; renewed March 26, 1878, at $17 from September 4, 1869; increase rejected October 31, 1878.

This rejection is upon application of William Leech, guardian of William Kelly, who alleges "insanity, result of wounds and exposure in the service, and that he requires the regular aid and attendance of another person," filed May 22, 1878.

The rejection of this claim by the Pension Office was in the following words:

Reject the claim for insanity on the ground that it is not due to the gunshot wound of the elbow; rejection affirmed by order of the Commissioner on ground stated.

The gunshot wound for which the soldier draws a pension is described by the examining surgeon of the Pension Office, 6th May, 1865, at Washington, D. C., as "gunshot wound of left elbow, with removal of joint

by operation; arm weakened and atrophied so as to be perfectly; cannot raise the limb without assistance; any improvement d though possible." He rates him totally incapacitated for obtai subsistence by manual labor from the cause above stated.

The soldier was again examined May 13, 1869, at Dayton, O the examining surgeon certifies:

He was shot through the left elbow joint. Subsequently excision was pe there is no bony or ligamented union between the arm and fore-arm. He ha trol over forearm to flex or extend, but can use his hand and fingers when rests. He is totally disabled for manual labor.

Again, at Washington, March 4, 1878, the board of examining su certify to the gunshot wound, and they also find "bayonet wo posterior portion of left shoulder; there is no disability from this w The last-mentioned board of examining surgeons, at Washington, C 17, 1878, again examined the soldier, certified to his wound, an "he also suffers from insanity, but we can discover no connecti tween that infirmity and the wound."

The present action in this case is to obtain from Congress, by t introduced, the increase of pension and relief to the soldier den the Pension Office upon the grounds heretofore stated, viz, "th insanity is not due to the gunshot wound of the elbow."

Col. H. P. Rugg states that—

Claimant was a member of his regiment (Fifty-ninth New York Volunteers) good soldier, and had previously served a long time in the Regular Army; duri of the time he was non-commissioned officer, and that he never knew or hear being of unsound mind, or of any habits or practices calculated to have ove his mental balance.

Dr. Henry Richings, who treated the soldier in Armory Squar pital, in Washington, D. C., in 1864, after he was wounded, state

That his treatment was only for gunshot wound of the left arm; that claim possessed of one of the most excitable and nervous temperaments; that, reme the claimant so well, he (Dr. R.) is not surprised, from his peculiar dispositio fested at that time, to hear that he is an inmate of an insane asylum.

E. F. Brown, deputy governor National Military Home, Ohio, that—

The soldier was admitted to that Home March 21, 1868, and then had a wound of the left elbow; that he, affiant, took command of the Home Decembe remembers the soldier well, and that he was insane then, but not as to require restraint until September 1, 1869, when admitted to the hospital of the Home and treatment; that he was transferred to the Government Hospital for the December 1, 1869; he (affiant) learns from claimant's comrades in the Fort; United States Infantry, beneficiaries of the Home, that he was then insane, known as "Crazy Kelly"; that he first exhibited symptons of insanity as far 1866, and unmistakably so while in the Forty-fourth United States Infantry

Dr. W. W. Godding, Superintendent Government Hospital for sane, states "that claimant was admitted there December 2, 186 the Soldiers' Home, Dayton, Ohio, and discharged February 28, 1 the care of his friends, then suffering with chronic mania with weakening of the mind, resulting from the long continuance of the disease." Dr. Godding states, "that there is a reasonable prob that the insanity resulted from his wound, and the excision of the that mania resulting from peripheral irritation in cases of injury known, and, other things being equal, I should say that insanity i likely to result from an injury where exsection had been performe where the limb had been amputated. (Filed May 29, 1878.)"

Dr. D. W. Bliss testifies to having made "a careful examina claimant, and to finding exsection of the left elbow joint from a g

wound, and that he is subject to chronic mania, incident, in affiant's opinion, to joint lesion."

The medical referee of the Pension Office, March 15, 1879, says:

Every intelligent physician if asked whether insanity *might* not result from such a wound as was incurred in this case, would probably answer yes. But that is not the question. Did the wound cause the insanity? is the question, and to that I answer most positively, *it is not so shown.* * * *

The same officer, May 28, 1879, says:

* * * I have to repeat the opinion that, though most certainly Dr. Golding's statement that peripheral irritation often causes insanity is true, it is not shown in this case. Of the many things that *may* have caused it in this case, the wound is but one, and I certainly cannot admit that one to the exclusion of the many.

T. B. HOOD,
Medical Referee.

P. S.—If action must be taken now, I reject.

H.

Your committee find that the petitioner served many years in the Army, and rose by regular gradation from a private in the ranks to be a commissioned officer; that he was wounded while in the line of duty in the service, and honorably discharged, and afterwards pensioned for disability resulting from the wound. Subsequently he became insane, and application was made to the Pension Office for an increase of pension equal to the increased disability, and the claim was rejected as above stated.

The question now to be determined is, Did insanity ensue from the wound, and is the petitioner thereby entitled to relief here?

The evidence before your committee shows clearly that the petitioner discharged his duty with marked regularity up to the time he was wounded. There is nothing to show either mental or physical unsoundness up to that time. On the contrary, he is represented as a good soldier, and in the language of his commanding officer, Colonel Rugg, was "free from any habits or practices calculated to have overturned his mental balance."

After receiving the wound, the surgeon who treated him for the wound in Armory Square Hospital, says "he became irritable, and that he is not surprised to hear of his having become insane." The Superintendent of the Government Insane Asylum, a gentleman familiar with mental disorders, gives it as his opinion "that, other things being equal, insanity resulted from the wound."

Dr. D. W. Bliss, a well-known surgeon, says "chronic mania, in affiant's opinion, due to joint lesion."

These gentlemen testify from their personal examination of the man, and the preponderance of their evidence over the theoretical ruling of the medical bureau of the Pension Office leads your committee to form the opinion that this is a meritorious case; we therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 3243) granting an increase of pension to William Kelly.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1540.

CHARLES H. FRANK.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FARR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4638.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4638) granting an increase of pension to Charles H. Frank, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case, in the Pension Office, that the petitioner was a private in Company H, Third Delaware Volunteers; enlisted March 3, 1862; discharged May 28, 1863; and filed declaration for pension June 3, 1863.

It also appears that he was admitted to the rolls at $4 per month, commencing May 29, 1863; at $8 per month, commencing June 6, 1866; at $15 per month, commencing January 1, 1868; at $18 per month, commencing June 4, 1872, "for injury of spine and resulting paralysis."

The bill now before your committee proposes to increase the pension to the sum of $50 per month; and as the merits of the case depend greatly upon the character and extent of the injury received by the claimant, your committee make full abstracts of the medical evidence in the case.

The certificate of disability upon which claimant was discharged says:

Being incapable of performing the duties of a soldier because of inability to use the lower extremities, produced by spinal injury received at Frederick City, Md.

Upon this certificate is the following indorsement:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, May 21, 1874.

This man, while serving with his company, and on the retreat from Harper's Ferry, May 31, 1862, at a double-quick movement, fell down and was trodden upon by a comrade, causing injury to the spine, for which he was subsequently discharged.

J. P. MARTIN,
Assistant Adjutant-General.

J. F. Farwood, M. D., testifies, September 20, 1873:

Have attended claimant since the close of the war of 1861 for a spinal injury received while in the service in said war; that he has never recovered.

In another affidavit, September 19, 1879, the same physician says:

Disability permanent and incurable. Have attended claimant since the war for internal spinal injury. Examined him September 6; found him suffering from spinal inflammation, which has caused him particularly to lose the use of left arm and leg; does not believe he will ever be of sound body *and health* again.

The claimant appeared before the board of examining surgeons of the Pension Office, at Washington, D. C., November 17, 1879, who, after giving a minute detail of their examination, state:

> Cannot use the left hand for any purpose, and claims that the whole left side is powerless, and the appearance would tend to confirm his statement, the arm being flabby, and the hand mottled and "claw-like"; drags the toe of the left foot. His gait is labored and awkward. * * * There can be no doubt but that he is paralyzed on the left side. * * * He is now in a condition to warrant a rating of second grade, as he is wholly unable to do any manual labor.

The Pension Office, October 14, 1879, rejects the application for increase, in the language of the medical referee, as follows:

> That the alleged hemiplegia is not chargeable to the injury of the spine is apparent in that such an injury should have caused paraplegia, and not hemiplegia.

Your committee cannot allow the rejection in the Pension Office to hide the stubborn fact that this petitioner is entirely disabled from earning a living or doing manual labor by reason of severe injuries received in the service in the line of duty. As a matter of record in the case, the Pension Office appears to have admitted the continuous and increasing severity of the soldier's disease by increasing his pension from time to time upon reports of their medical officers.

Your committee are of the opinion that the petitioner is entitled to the increase asked for by him, and therefore report favorably upon the prayer, and recommend the passage of the bill (H. R. 4638) granting an increase of pension to Charles H. Frank.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1541.

DAVID G. HUTCHINSON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FARR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3294.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3294) granting a pension to David G. Hutchinson, having had the same under consideration, respectfully report:

We find, from the evidence on file in the original pension claim at the Pension Office, that the petitioner is the father of William H. Hutchinson, a corporal of Company E, Seventeenth United States Infantry, who enlisted September 2, 1864, and is rated as discharged September 1, 1867. The claim of the father is fully established as far as the question of identity, celibacy of the son, death of the mother, and dependence of the father is concerned. It was rejected by the Pension Office October 12, 1872, on the ground that the death of the son was not medically established, and afterwards rejected on the ground that the claim was not prosecuted to a successful issue within five years of the date of filing. The records of the Adjutant-General's Office show the soldier to have been discharged September 1, 1867. The proof of his death is made to the following effect: That the soldier died in Galveston, in the State of Texas, of yellow fever, the latter part of August, 1867. The evidence of comrades who knew of the fact, of an officer who had a general knowledge of the fact, is presented, but it is claimed by the Pension Office that the evidence is not sufficient to establish the date and cause of death.

A corporal of the same company as the deceased soldier makes affidavit that he was in the same town with him at the time that he died, and about fifteen minutes before he died the discharge of the deceased soldier came to the tent where he was sick, together with the discharge of the affiant. The discharge of the deceased soldier was taken in charge by the orderly sergeant of the company, as he said, to take to the captain. The whereabouts of the orderly sergeant in question cannot be ascertained by the petitioner or his attorney. The evidence of the corporal above quoted is further to the effect that he was present at the soldier's burial, and that at about the time of his death there were large numbers of men dying from yellow fever and that but little record was made of it.

To the mind of your committee the fact is fully established that the soldier died just about the time that his discharge, by reason of expiration of service, reached the *camp wherein he* was lying ill, whether a

day or two before or a day or two after his death is not altog
tain, but sufficient proof is adduced to show that the death-ca
soldier was from yellow fever, of which he was sick and suffer
in the service of the United States. The evidence of death in
ice is established as fully as the petitioner can possibly establis
your committee is fully of the opinion that, on account of th
cality of the law, this petitioner has been deprived of his pens
enough. We therefore report favorably upon the prayer, an
mend the passage of the bill (H. R. 3294) granting a pension t
G. Hutchinson.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1542.

JOSEPH H. ADAMS.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FARR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5440.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5440) granting a pension to Joseph H. Adams, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office, that the petitioner was a private, Company D, First New Hampshire Volunteers, enlisted April 27, 1861, discharged August 9, 1864, and filed declaration for pension September 19, 1877—

Alleging that at Poolesville, Md., June 21, 1861, he was sunstruck, which has continued to affect him ever since. On the slightest exertion or excitement he becomes dizzy and partially blind, and sometimes faints; has sharp pains in his head. Was sunstruck during dress parade, and fell down in the ranks. Was treated by the regimental surgeon.

Dr. Henry G. McIntire, November 2, 1878, testifies that—

He never knew claimant to be sick prior to enlistment, and knows he was very healthy and strong.

Comrades Charles Morse and Charles C. Thorn, November 2, 1878, testify—

That claimant, while at Poolesville, Md., about June 21, 1861, was sunstruck while on dress parade, and fell to the ground insensible. They were detailed to carry him to his quarters, and were present when the surgeon attended him, and heard him say it was a clear case of sunstroke. That claimant was unconscious at the time and they thought he was dead.

Claimant, November 2, 1878, states—

That he cannot find a commissioned officer who has personal knowledge of his sunstroke; that the doctor (Crosby) who treated him in the Army is dead; that he cannot furnish medical evidence of treatment since discharge, because Dr. Fitts, who treated him subsequently, is now an inmate of the insane asylum at Concord, and incapable of testifying.

Seth W. Shaw and Otis F. Jewell, neighbors, testify to a personal knowledge of the claimant since discharge, have frequently worked with him, and know that he is affected as alleged by him. Has lost one-half of his time since discharge.

The Adjutant-General reports—

The books of regiment or company not on file. The regiment was at Poolesville, Md., in June, 1861.

The Surgeon-General makes *same report.*

The board of examining surgeons at county of Hillsborough, N Hampshire—

Certify that the claimant is partially incapacitated by dizziness and partial bl ness, the result of sunstroke. In his opinion, did originate in the service, and i uncertain duration. Both eyes and eyelids are injected. Has deep transverse w kles in the forehead, the result of habitual action of the muscles to exclude l from the eyes. We recommend a pension of one-half total, or $4 a month.

The Pension Office, December 18, 1878, rejected the claim on ground—

No record of sunstroke alleged. Claimant unable to furnish any medical evid of its effects in the service, or since discharge, or from his officers as to origin.

Your committee are of the opinion that the disability found by examining surgeon originated in the service in the line of duty; th proven by two comrades. The petitioner swears that he cannot furr medical evidence and submits his case to the Pension Office on the dence furnished. He was a good soldier, having served a term of th years after receiving the injury. We therefore report favorably u the prayer of the petitioner and recommend the passage of the bill R. 5440) granting a pension to Joseph H. Adams.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1543.

CHARLES McCARTHY.

MAY 21, 1880.—Laid on the table and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Charles McCarthy, having had the same under consideration, respectfully report:

We find from the papers on file in the original pension case that the petitioner was a private of Company E, Sixth California Volunteers, and was discharged from the service October 31, 1865, and that for the past five years he has been a member of the Dayton, Ohio, Soldiers' Home. He alleges that in 1867, on account of dropsy of the knee, resulting from rheumatism which he had contracted in the service, an amputation of his left leg became necessary, and the operation was performed. He claims pension for that disability, but fails to place before the Pension Office or your committee any evidence, save his own affidavit, showing the contraction of the disability or that the amputation was the result of such disease contracted in the service. The Pension Office called upon him for the evidence necessary in the case, but he seems to have relied upon the application pending before Congress rather than supply the Pension Office with the testimony necessary to establish his claim.

We therefore report unfavorably upon his prayer, and recommend that the bill (H. R. No. 2288) granting a pension to Charles McCarthy be indefinitely postponed.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1544.

MICHAEL L. KENNEDY.

MAY 21, 1880.—Laid on the table and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petitition of Michael L. Kennedy for pension, having had the same under consideration, respectfully report:

We find from the evidence on file in the original pension case at the Pension Office that the petitioner was a private in the Elgin Battery, Illinois Light Artillery; enlisted November 8, 1862; discharged September 2, 1865; again enlisted November 16, 1866; discharged April 15, 1869. His declaration for pension was filed February 4, 1870; rejected May 15, 1877, on ground—

That the records of the War Department show him not serving with battery on the day he received the alleged wound, but was away in hospital, and no way to show required evidence proving disease.

The petitioner alleges he received two gunshot wounds in right leg November 17, 1863, at the siege of Knoxville, Tenn., and while lying on the ground contracted a cold resulting in pneumonia.

The petitioner in support of his allegation presented a joint affidavit purporting to be signed by three comrades, in which the affiants say they had personal knowledge of his having been wounded, and that after remaining in the company ten days wounded, he was taken with disease and was sent to hospital.

The records show that one of the comrades named died September 18, 1863, before the alleged wounding, and the other two names do not appear upon the company rolls. Subsequently he filed evidence of three additional alleged comrades, but the Adjutant-General fails to identify them as soldiers of the regiment. The Adjutant-General's record shows this man frequently rated "absent without leave," "deserted," "absent in hospital," and seldom "present." At the time he alleges he was injured, he is marked "absent in hospital." It does not appear that he ever did much duty as a soldier, and has produced no testimony to show that he did.

In his subsequent enlistment there is no further record of him beyond that of his captain on the certificate of disability. A singular circumstance in the case is that the surgeon who signed the certificate of disability was afterwards appointed examining surgeon of the Pension Office, and although as examining surgeon he found the gunshot wounds of the leg, he as Army surgeon, a year before, made no mention of them.

The entire case looks suspicious, and, in the judgment of your committee, is totally without merit.

We therefore report unfavorably, and ask to be discharged from the further consideration of the petition.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1545.

MARTHA F. WOODRUM.

MAY 21, 1880.—Laid on the table and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Martha F. Woodrum, having had the same under consideration, respectfully report:

We find from the petition before your committee and the papers on file in this claim at the Pension Office that the petitioner is the widow of James Woodrum, who was a soldier in Company C, Ninth Kansas Cavalry, and that he was killed while at the house of his brother-in-law, some nine or ten miles from where his regiment was camped, on the 12th of January, 1864, by the hands of a citizen with whom the soldier was at the time engaged in a personal altercation.

There is nothing before your committee to show that the death occurred in line of duty, but rather that it was the result of a personal quarrel, the soldier at the time being on furlough. We therefore do not see that the petitioner is in any manner entitled to the benefits of the pension law, and report adversely upon her petition, and ask to be discharged from the further consideration thereof.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1546.

SAMUEL JONES.

MAY 21, 1880.—Laid on the table and ordered to be printed.

Mr. J. T. UPDEGRAFF, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Samuel Jones, having had the same under consideration, respectfully submit the following report:

That from the evidence before your committee and the papers filed in the original case at the Pension Office, we find that the petitioner is the father of James Jones, late private Company C, One hundred and second Ohio Volunteers, who served during the war and died one month after discharge from disease contracted in the service. That as "dependent father" he was pensioned at $8 per month, commencing August 7, 1865; that he is totally blind, and has been so disabled since 1849; that he is sixty-five years of age, and up to within the past two or three years has been earning a partial subsistence by the work of his hands. He is now debilitated, and petitions Congress to increase his pension to assist him in his declining years.

While the petitioner may be a deserving object of charity, your committee believe that under the law and equities of the case the government has done its part, and that the case of the petitioner is not one in which Congressional interference can be safely made with existing law.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1547.

ARTHUR W. IRVING.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6260.]

The Committee on Invalid Pensions, to whom was referred the petition of Arthur W. Irving, asking for pension, having considered the same, make the following report:

It appears from evidence on file that the soldier was passed into the service after two rigid examinations, and was then sound in every respect and free from rheumatism; that he was attacked with typhoid fever and sent to hospital, and that it resulted in rheumatism, which has continued to grow gradually worse until it has become chronic and produces stiffening and curvature of the spine, and he is now wholly disabled from earning his living by manual labor.

The evidence is conclusive that the soldier was sound when he entered the service; that he contracted his disease in the service of the United States and in the line of his duty, and that his disease has become chronic. The committee therefore report the accompanying bill, and recommend its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1548.

MICHAEL O'BRIEN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6261.]

The Committee on Invalid Pensions, to whom was referred the petition of Michael O'Brien, praying for a pension, beg to submit the following report, after a full examination of the papers in the case:

Michael O'Brien was a private in Company B, Fifty-eighth Regiment Illinois Volunteers. He enlisted October 6, 1861, and was discharged at Camp Butler, Illinois, February 23, 1863.

This claimant has been before the Pension Bureau for nearly twelve years. He applied for pension July 25, 1864, alleging disability by reason of rheumatism contracted at Pittsburgh Landing in April, 1862. In another declaration, September 10, 1867, he alleges disability by reason of paralysis of both limbs, contracted about February 12, 1862, by taking cold by exposure in sleet and rain storm while on board of a transport from Saint Louis to Fort Donelson, Tennessee. Each of these declarations seems to have foundation in fact, and hence the discrepancies are explainable.

This soldier, though in the service for over sixteen months, seems to have done but little duty. For over ten months prior to his discharge he was in hospital at Camp Butler, near Springfield, Illinois.

The Commissioner of Pensions rejected claim because record evidence is unfavorable, and parol evidence fails to controvert the presumption that claimant's disability is not due to his service as a soldier.

This does not entirely comport with the findings of the committee. The surgeon of claimant's regiment, Dr. H. M. Crawford, testifies that soldier was in "good, sound health at the date of his enlistment, and performed his duty as a soldier until about February 12, 1862, when, by reason of exposure at night on deck of a transport from Cairo, Illinois, to Fort Donelson, Tennessee, in a storm of sleet, he contracted a cold, which settled in both limbs, causing partial paralysis. Said paralysis did not exist at date of enlistment, and was not caused by intemperate habits." And in corroboration of surgeon's testimony, D. B. Lynch, late captain of soldier's Company B, Fifty-eighth Illinois Volunteers, states that said claimant, while in line of duty, February 1, 1862, on board transport on the way from Cairo, Illinois, to Fort Donelson, Tennessee, contracted cold, which increased during action at Fort Donelson, and settled in his limbs. He was sent home on furlough soon after, and on his return to *duty, April 1, 1862, at Shiloh*, Tennessee, was soon

again sent to hospital. From this time till his discharge, more ten months, he is in hospital. In certificate of disability for disch W. Sturgis, surgeon of the post, says, "soldier is incapable of perfo duty because of general debility. * * * His disability seems the result of strong predisposition to tuberculosis." In July, 1864 after his discharge, Dr. W. D. Stillman testifies that claimant was t incapacitated to obtain a living by manual labor; that he was suf from chronic rheumatiam in back and shoulders, said disability ori ing in the service. He was then an inmate of Marshall County, Ill poor-house. In July, 1871, claimant states that he has not been tr by any physician for his disability, but has taken care of himself chronic invalid. November 1, 1871, board of examining surgeons a cago reports his disability "nearly complete; paralysis of lowe tremities, walks slowly, drags both feet; is almost helpless."

Since his discharge he seems to have lived at some of the chari institutions of the land—Marshall County, Illinois, poor-house; Si Hospital, Saint Louis, Mo.; Soldiers' Home, Chicago, Ill.; and la Soldiers' Home, Dayton, Ohio, where he is now.

The claimant appears, by the testimony, clearly to have been a s healthy man before entering the service, and though his services soldier were not large, but quite the contrary, yet at the time o discharge, and for months before, he was debilitated; that since hi charge he has been unable to labor, because a chronic invalid, and 1871 his lower extremities have become seriously paralyzed. Ther would recommend favorable action on the accompanying bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1549.

JOHN SHEIBER.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6262.]

The Committee on Invalid Pensions, to whom was referred the petition of John Sheiber, late a private in the Twelfth Pennsylvania Volunteer Cavalry, praying for a pension, submit the following report:

The said John Sheiber enlisted in the military service in the Twelfth Pennsylvania Volunteer Cavalry, Company E, on the 11th of November, 1861; was captured on the 6th of October, 1863; exchanged and ordered to parol camp at Annapolis, Md., about the 1st of May, 1864, where, on the 5th of same month, he fell and fractured his hip in such a manner as to entirely disable him from that time down to the present. He was discharged from the service December 10, 1864.

He made his application to the Commissioner of Pensions for a pension, but his claim was rejected on the ground that it did not sufficiently appear that he received the injury while in the line of duty. But, on a careful examination of all the evidence and an additional affidavit of the claimant, we are clearly of opinion that he was injured while in the line of his duty, and that he is entitled to a pension.

The committee therefore recommend the passage of the accompanying bill for his relief.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1550.

MICHAEL McGINTY.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6263.]

The Committee on Invalid Pensions, to whom was referred the petition of Michael McGinty, late private Company M, Ninth Regiment New Jersey Volunteers, to be restored to the pension rolls, report as follows:

Michael McGinty was placed on the pension rolls November 17, 1870, but was dropped July 25, 1876, upon the ground that his disability was not received in the line of duty.

The said McGinty lost his left hand November 14, 1861, at New Brunswick, by jumping out of the wrong train to get on the right train. He was absent in the performance of his duty, having been sent to New York to apprehend and bring back to his command a deserter.

These facts are clearly proven, and your committee think that the mistake of the soldier in getting on the wrong train, and his attempt to get on the right one so as to get back to his command, should not deprive him of his pension, and therefore recommend the passage of the accompanying bill to restore him to the pension rolls.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1551.

ROBERT P. WALKER.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6264.]

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of Robert P. Walker, late private in Company H, Ninety-fourth Regiment Ohio Volunteers, have had the same under consideration, and ask leave to submit the following report:

That the records of the Adjutant-General's Office show that he was mustered into service as a private on the 24th day of August, 1862, at Piqua, Ohio, in Company H, Ninety-fourth Regiment Ohio Volunteers, and discharged on surgeon's certificate of disability November 5, 1862, at Louisville, Ky., by reason of scrotal hernia; that he was placed on the pension roll at $8 per month November, 1862, increased to $25 per month June, 1866, and again increased to $31.25 per month June, 1872, continuing at that rate until March 4, 1874, when he was dropped by investigation made by Talbert Lanston, special agent of the department, which report was that the disability existed prior to enlistment. The investigation was made in October, 1875, and consists of numerous affidavits of the family connection of petitioner and others in his immediate neighborhood. After a careful review of all the matter collected in the report by this agent, which is very thorough and shows him to be zealous in the discharge of his official duties, it is considered *light and frivolous*, and that the several statements tending to exhibit rheumatism in this case, "a family disease, transmitted to pensioner through the blood of both parents," is only made by a showing of the various ailments common to the human family. From the pensioner he gathers: At the age of two or three years he had scarlet fever; between ten and eleven he had what Dr. Stewart called rheumatism, but which others called *growing* pains; a year later he had typhoid fever; these consisted of all his illness up to the time of his enlistment, at about the age of seventeen. What was called rheumatism, or *growing* pains, he states was caused by wet weather at corn-planting time, and only lasted ten or twelve days.

About two months after enlistment, in an attack by Morgan's cavalry between Lexington and Louisville, in getting over a stone fence he was ruptured by one foot being caught on the fence and the other sliding in a ditch. Afterward he was taken with flux, and a hospital steward gave him a dose of jalap, which constipated him for six days, when rheu-

matism set in, which he charges to exposure before the flux set in which disables him to the present time.

The father and mother corroborate the above statement of his il in childhood, and add that he was sound at enlistment and showe sign of hereditary rheumatism.

Since the filing of the petition in this case the following affid have been made:

James M. Stewart, M. D., states that for thirty years he has bee quainted with the Walker family; that none of the family has ever afflicted with rheumatism or chronic diarrhea, excepting Robert i his discharge from the Army.

Joseph A. Kyle, M. D., was the family physician of the Walkers vious to Robert entering the Army, and made an examination as t propriety of his enlisting; that there was nothing like rheumatis his system. He has been acquainted with Robert's grandfathe forty years; well acquainted with his father and brothers, his mo and most of her family, and know they were not subject or affli with rheumatism, and knows that Robert was an active boy whe enlisted.

Jacob P. Horner, John Phillips, James P. McFarland, and Rober Cooper, comrades in his company, testify to their knowing him before entering the service; that he was sound, and a good, active dier up to a time of a forced march of 100 miles or more, when he placed in a hospital in a totally helpless condition. There is a g amount of conclusive testimony of his total helplessness up to the p ent time.

The case, through the investigation of the department, has been drawn out, and the fact of his contracting rheumatism in the ser and line of duty is clearly established, and the committee therefore clude he should be again restored to the pension rolls, and recomm the passage of a bill accordingly.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1552.

OSAGE NATIONAL BANK, AT OSAGE, IOWA.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Banking and Currency, submitted the following

REPORT:

[To accompany bill H. R. 4716.]

The Committee on Banking and Currency, to whom was referred the bill H. R. 4716, submit the following report:

It appears by the evidence presented to the committee that on the night of May 5, 1866, the Osage National Bank, of Osage, Iowa, was robbed, its vaults and safe broken open, and 1,800 engraved notes of said bank, each of the denomination of $5, were stolen from the safe. These bills had been issued from the Treasury Department to the bank and receipted for by it, but had not been signed by either of the bank officers. All proper measures were taken at once by the bank to recover the bills and arrest the robbers, and descriptions of the stolen bills were promptly and widely published.

It appears by the statements of the officers of the bank that only about 50 of the 1,800 bills have been presented to it for redemption, all of which were rejected; and the Treasurer of the United States reports, under date of March 13, 1880, that 985 of said notes have been presented at the Treasury for redemption and rejected.

Since the establishment of the national banks it appears that notes of five of such banks have been stolen before being executed by the bank officers, and put in circulation with forged signatures, as was done with the notes now under consideration. In at least one of these cases, to wit, the case of the Bank of Pontiac, Ill., the same relief proposed to be given by the bill referred to the committee has been given to that bank by act of Congress.

As the loss of the notes in the case under consideration occurred without fault of the bank, and as there is no obligation incurred by the United States to redeem national bank notes which may get into circulation without the signatures of bank officers, the committee think it proper that Congress authorize the Comptroller of the Currency to issue to the Osage National Bank bills to the amount of $9,000, in lieu of those which have been stolen, upon proof being made to the satisfaction of the Comptroller that the notes did not in fact bear the signature of either of the officers of the bank, and upon the bank giving a good and sufficient bond for $10,000 with sureties to be approved by the Comptroller of the Currency, to secure the government againt loss should any of the stolen notes be inadvertently redeemed at the Treasury.

The committee therefore report the bill back to the House and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1553.

NARCISSA GIBSON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill S. 855.]

The Committee on Invalid Pensions, to whom was referred the bill (S. 855) granting a pension to Narcissa Gibson, having had the same under consideration, report as follows:

That it appears that the Senate report No. 168, which accompanies this bill states the facts in this case, and your committee adopt the same as their report, and report back said bill with the recommendation that it do pass. The Senate report as follows:

Mr. MCPHERSON, from the Committee on Pensions, submitted the following report (to accompany bill S. 855):

The Senate Committee on Invalid Pensions, to whom was referred the bill (S. 855) for the relief of Narcissa Gibson, widow of the late Alexander Gibson, a captain in the United States Navy, by placing her on the pension-rolls of the United States, report as follows:

Narcissa Gibson was the lawful wife of Captain Alexander Gibson, of the United States Navy, at the time of his death. Captain Gibson died in the year eighteen hundred and seventy-two of phthisis pulmonalis, contracted while in the United States Navy in the line of duty, as appears from the medical testimony on file, in the year 1861. It further appears from the testimony that Captain Gibson's malady was aggravated from an injury to his shoulder incurred in the line of duty during a gale of wind, 1864. Captain Gibson was on active service as an officer of the United States Navy for forty-three years, and, in accordance with existing regulations as to age, was in the year 1867 placed on the retired list of officers of the United States Navy.

It was the almost invariable custom of the United States Government to allow pensions to the widows of all commissioned officers of the Army and Navy, until a decision of Caleb Cushing, the then Attorney-General, rendered it necessary to the allowance of a pension to the widow of an officer that she should prove that he died of injury or disease contracted while in the service and in the line of duty.

The only testimony on file, antagonistic to the claim, and on which testimony was based the action of the Pension Office in rejecting it, is that of Dr. R. B. S. Hargis, who attended Captain Gibson in his last illness, who says:

"Upon a careful inquiry with regard to the history of the case (phthisis pulmonalis) which ultimately resulted in his death, *I formed the opinion* that it had its origin in *an inherent constitutional predisposition* and gradually developed during the last few years of active service in the United States Navy."

This would imply that *an inherent constitutional predisposition* lay dormant during forty years of youth, manhood, and middle age to spring into activity at the age of [illegible], just at the time when Captain Gibson had been subjected to great exposure while serving before the enemy; that it slumbered again does not appear, but it does appear that at last he succumbed to it and died.

Captain Gibson's record shows that he had been in the active service of his country as a naval officer for nearly 50 *years; that he was in the* service from his boyhood;

that he was a meritorious officer who had nearly attained the summit of his profession by his personal merit, and there is no evidence whatever brought forward, nor is it even intimated that the disease contracted in 1861, and of which he died in 1872, was in any way brought on or accelerated by any indiscretionary action of his own.

It appears among the papers on file in the case that the claimant appealed from the adverse decision of the Commissioner of Pensions to the Secretary of the Interior, who treats the matter thus:

"While I am not quite prepared to disturb the action of your office in rejecting the claim on the grounds stated, I am not quite convinced that such would be a just disposition of it. Were I to state to the claimant the grounds for rejection herein referred to, she would be almost justified in assuming that 43 years of active service in the United States Navy was a more probable and natural cause of the disease which lost her a husband than *an inherent constitutional predisposition* discovered by the attending physician, and I confess I am very much inclined to this view of the case."

The action of the Pension Office in rejecting the claim with the testimony before them so unvarying as to its merits is faulty, or an error in judgment. The opinion of the physician who attended the deceased captain in his last illness, who does not appear to have ever seen or attended him before, is not borne out by the presumptive facts in the case, for it is a *reductio ad absurdum* to believe that a man who was exposed to the inclemencies of a sea-faring life for fifty years should have carried the inherent elements of consumption from his cradle, of which disease he died, when there is direct evidence that it was contracted during the war of the rebellion from extraordinary exposure in the year 1861.

Your committee therefore return Senate bill No. 855 with the recommendation that it do pass without amendment.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1554.

A. J. ARNOLD.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 903.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 903) granting a pension to A. J. Arnold, having had the same under consideration, respectfully report:

It appears from the evidence in this case that the petitioner, Andrew Jackson Arnold, was a corporal in Company D, Eighty-ninth Illinois Volunteers; that he enlisted August 14, 1862, and was discharged April 1, 1864. He filed his application for pension April 28, 1864, alleging that while in the service, at Murfreesborough, Tenn., on a foraging expedition, he was injured by a wagon falling upon him and injuring his spine; that he was afterwards troubled with palpitation of the heart, which terminated in heart disease, the result of chronic diarrhea with which he had been afflicted.

The testimony of comrades and officers of his regiment, who knew the petitioner before and at the time of his enlistment, is positive as to his being a healthy, able-bodied man when he enlisted. The evidence of other officers shows the contraction of the disease of chronic diarrhea in the service, and also the fact of the injury in the service.

The testimony of physicians (four) and neighbors shows that from the time this petitioner came out of the service until the present he has been constantly afflicted with spinal disease and with chronic diarrhea.

The records of the Adjutant-General's Office show him to have been present up to September 25, 1863, when he entered hospital with diarrhea, and that he was discharged from the service upon the surgeon's certificate of disability by reason of chronic diarrhea. The certificate of disability whereon this man was discharged finds him—

> Incapable of performing the duties of a soldier because of chronic diarrhea of more than twelve months' standing, which has resulted in general anasarca. He is physically unsuitable to enter or re-enlist in the Veteran Reserve Corps.

The first medical examination of the man was made at Indianapolis, April 22, 1864, by an examining surgeon of the Pension Office, who found him suffering very greatly from heart disease and chronic diarrhea, and rated him at two-thirds. His next medical examination was in 1869, when the examining surgeon found him not incapacitated from the disease. The third examination was at Carbondale, Ill., in 1877, when the examining surgeon found him greatly debilitated and suffering, and rated

month. The last medical examination found him one-
ted, and he was rated at $4 per month.
Office rejected the claim February 15, 1878, on the ground
from chronic diarrhea, that being the decision of the
er, and the injury of the spine having been barred by
S." The case was, however, reopened, and was again
e reason that the Pension Office did not consider the evi-
d sufficiently strong to show the continuance of diarrhea.
ttee find the positive evidence of four physicians who
is man since he came out of the service, and of a number
no had daily knowledge of him, and, taking the positive
se gentlemen, we are forced to the conclusion that the
application for pension does him an injustice. We there-
rably upon his claim, and recommend the passage of the
granting a pension to A. J. Arnold.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1555.

MISSOURI ANDERSON.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4627.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4627) granting a pension to Mrs. Missouri Anderson, having had the same under consideration, respectfully report:

We find that the petitioner is the widow of Reuben W. Anderson, who was a private in Company A, Tenth Kentucky Cavalry, who enlisted December 20, 1863, and was discharged the service June 26, 1865, and who died April 4, 1870. We further find that there was no invalid application filed by the deceased officer, and that the widow's application was filed September 17, 1873. It was rejected November 7, 1874, for the reason that the soldier's death-cause did not originate in the United States service. The circumstances of this case are peculiar, and are as follows:

The deceased soldier during his service in the Army, as shown by the evidence of his officers and comrades, and by the hospital records and the records of the Adjutant-General of the United States Army, all on file in the pension claim, contracted disease of the eyes, which disability continued at the time of his discharge, and grew worse as subsequent years passed until finally he became almost totally blind. Additional evidence of this fact is shown by statements that during his life he peddled little poems composed by himself, one of which, in the form published for his sale, is before your committee. It would seem from the evidence that he strove to the best of his ability to provide for his family, consisting of a wife and two children, living in Massac County, Illinois, and that while procuring fire-wood for them one day before his death he hewed down a tree, and, in endeavoring to avoid the falling tree, was caught by the branches thereof and killed.

The Pension Office was obliged to reject the claim, there being no law under which a pension could be granted, and the record made by the office June 24, 1875, is as follows:

> The claimant is informed that the claim could not be allowed under the general pension laws. The claimant's only recourse is to Congress for a special act.

The point in the case is this: the soldier received his disability which caused his loss of sight in the service and in line of duty, as is admitted by the Pension Office. The cause of death, while not strictly incident to the service, *under the law, was the result of* the loss of vision with

which he had been afflicted. Owing to the disability he contrac
the service his widow lost his services for her and her children's su
The equities of the case seem to demand recognition by the g
ment, and the circumstances of the application appeal to the sym
of all.

Your committee believe that this case is one in which Congre
and should act, and therefore we report favorably upon her praye
recommend the passage of the bill (H. R. 4627) granting a pensi
Missouri Anderson.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1556.

MRS. MARGARET McKERINAN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2398.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2398) granting a pension to Mrs. Margaret McKerinan, having had the same under consideration, beg leave to submit the following report:

It appears in the evidence in the case on file in the Pension Office that the petitioner is the widow of Tobias McKerinan, private of Company M, First Illinois Light Artillery, enlisted January 31, 1862, and reported by the Second Auditor July 20, 1862, "deserted at Memphis, Tenn.; supposed to be insane."

The widow's application was filed October 27, 1864, rejected by Pension Office April 22, 1872, reopened and rejected October 10, 1872. Ground of rejection:

Because not prosecuted to a successful issue within five years from the date of filing. No evidence of death in the War Department.

The Adjutant-General reports name on rolls as Tobias Kerinan, dates of enrollment as above, and reports him deserted June 20, 1862, at Memphis, Tenn.; February, 1862, reported present; rolls for March, April, May, and June, 1862, are not on file, nor are the returns of regiment covering that time.

Capt. William Cogswell, of claimant's company (filed September 26, 1879) testifies as follows:

That the soldier (Tobias McKerinan), on or about the 15th day of May, 1862, having contracted diarrhea and fever, or other disease in the service and line of duty at Corinth, Miss., by reason of exposure and the hardships of the service, he was placed in hospital about June 1, 1862; that he came to my camp and asked to be discharged; that I went to the surgeon to get him discharged; that he left the camp remarking, "He would not live to see another day"; that I shortly thereafter went to the hospital, but he was not there; I have not since seen him nor heard from him; I am and was satisfied at the time that the soldier was insane."

By a general order issued about August 1, subsequent to the above event, soldiers not in camp were reported as deserters, and this soldier was so reported. The order was a positive one, and a mustering officer stood by me as the names were called, and every absentee was reported as a deserter. Soldier's insanity was undoubtedly brought on by severe service and exposure in line of duty; and I have always believed that said soldier wandered off in his crazy situation, and died from exposure and want of care at Memphis, Tenn., on or about the 20th day of June, 1862.

The Adjutant-General reports, "No evidence of death on file."

James McKerinan, brother of the soldier, in affidavit of June 19, 187[illegible] says that—

> He received a letter from him just after siege of Corinth, in which he stated that h was very sick and did not expect to recover, and requested him (the affiant) to loo after the collection of his bounty and monthly pay, and gave him some directio about his family; and that he placed the letter in the hands of attorneys Wilkin Golden, of Marshall, Ill., who were employed to prosecute a claim for pension for h brother's widow.
>
> He further states that the said Tobias McKerinan lived happily with his famil was greatly attached to his children, and that if he lived, or was alive, would ce tainly communicate with them; but that no one has ever heard of him since the ti mentioned when he wandered out of camp.

The Surgeon-General reports no records of Corinth, Miss., prior t 1863, and none of the battery on file.

Your committee are of the opinion that this is a meritorious and deserving case; while the evidence is meager, yet it appears straightforward and honest. The soldier's sickness cannot be proven by the records, as they are missing; but it is proven by his captain, who details the facts, which indicate very strongly that the soldier wandered off while insane and died.

Your committee therefore report favorably upon the case, and recommend the passage of the bill (H. R. 2398) granting a pension to Margaret McKerinan.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1557.

BENJAMIN FRANKLIN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5100.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5100) granting an increase of pension to Benjamin Franklin, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence filed in the case that the petitioner was a private in Company H, Second Minnesota Cavalry, and is a pensioner upon the rolls of the Pension Office, at $72 per month, for the loss of both hands and both feet while in the service; this amount being the highest rate of pension allowed by law.

The bill now under consideration proposes to increase the pension to $100 per month. A favorable report in this case was made by the Committee on Invalid Pensions, House of Representatives, third session Forty-fifth Congress.

Your committee are of the opinion that this is a meritorious case, and therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 5100) granting an increase of pension to Benjamin Franklin.

[H. R. Report No. 210, Forty-fifth Congress, 3d session.]

BENJAMIN FRANKLIN.

MARCH 3, 1879.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. V. RICE, from the Committee on Invalid Pensions, submitted the following report (to accompany bill H. R. 5314).

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5314) to increase the pension of Benjamin Franklin, have had the same under consideration, and submit their report:

Mr. Franklin is the only pensioner or claimant for pension known to have lost both feet and both hands while in the service, and is now on the rolls at $72 per month.

The committee are of opinion that this is a case properly entitled to the increase asked, viz, $100 per month, and therefore recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1558.

ANSON K. YOUNG.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 858.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 858) granting a pension to Anson K. Young, late private in Company I, Forty-third Regiment Wisconsin Volunteers, have had the same under consideration, and ask leave to submit the following report:

The evidence now on file shows that the soldier enlisted August 21, 1864, and was then a healthy, sound man. This is proved by Dr. George E. Robertson, his family physician, as well as by the evidence of several non-professional witnesses. He was first taken sick at or near Johnsonville, Tenn., November 8, 1864, beginning with chills and fever, followed by chronic diarrhœa and a complication of disorders, which have finally resulted in paralysis of one side, totally disabling him. His disability is shown connectedly by the several hospital records, by the evidence of his captain and surgeon, from all of which it appears that the soldier was sound when he entered the service; that he contracted his diseases in the service and in the line of duty. It is also shown by his physician and neighbors that from December, 1864, to May, 1865, he was at home on sick leave, and wholly unable to rejoin his regiment without endangering his life; and that he is now paralyzed on one side and wholly disabled from earning his living by manual labor indicates that he is entitled to the increase asked. Therefore the committee believe that the evidence shows this to be a meritorious case, and are confirmed in this opinion by the fact that he was pensioned at $24 per month April 11, 1879. He now asks an increase in accordance with the recommendation of the surgeon at his last medical examination therefor.

Your committee are of the opinion that the examining surgeon's report indicates that he is entitled to the increase; therefore report favorably, and recommend the passage of the bill (H. R. 858) granting a pension to Anson K. Young, with an amendment.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1559.

WILLIAM O. MORGAN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GEORGE R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 805.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 805) granting a pension to William O. Morgan, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence in this case on file in the Pension Office, and that submitted to the committee, that the petitioner was a private in Company K, Thirty-seventh Illinois Volunteers; enlisted August 21, 1861, and discharged May 15, 1866. Filed declaration for pension September 12, 1876, alleging:

Disease of eyes contracted in the summer of 1862, at Springfield, Mo. Contracted lung disease from exposure in the march from Missouri to Arkansas in the spring of 1863. Letter of claimant filed March 10, 1877, states that disease of eyes was contracted about June 1, 1862; cannot give exact date of contracting lung disease, but it was in April, 1863. Did not mean to say I was in hospital for sore eyes.

The Pension Office, February 20, 1878, rejected the claim, saying:

No record, and inability to furnish medical evidence to connect alleged diseases with service.

The Surgeon-General's reports show that—

Private William Morgan, Company K, Thirty-seventh Illinois, was admitted to post hospital, Syracuse, Mo., January 25, 1862, with catarrh fever, and was furloughed February 10, 1862. No records of the regiment on file.

Prior to service, your committee find that Dr. W. Fitham, claimant's family physician and his father's family physician, says (filed July 6, 1877):

Is acquainted with claimant; nor his father or mother were ever treated or troubled with disease of eyes or lungs; claimant was not when he entered service.

Colonel John C. Black, Thirty-seventh Illinois Volunteers, testifies that he commanded claimant's regiment from February 13, 1863, to August 15, 1865; knew him well, and that to the best of affiant's recollection and belief claimant was much of that time disabled from duty by a virulent attack of sore eyes, contracted in the service.

Affiant is informed and believes that the surgeon and assistant surgeon of said regiment are dead.

Captain W. P. Black, same regiment, testifies:

At Springfield, Mo., in the summer or fall of 1862, claimant was affected with sore eyes, being contracted while a member of company; cannot state cause or duration of same. In the spring of 1863, as I remember, on a march from Missouri to Arkansas, of great hardship, lasting eight days, distance 190 miles, swampy and rainy, regiment without tents or baggage, and only three days' rations; claimant was young and of slight physique, and from what I have since learned I have no doubt that claimant in this march and the siege of Vicksburg received injuries which have undermined his constitution.

Comrade W. H. Smith testifies claimant contracted sore eyes at Springfield, Mo., in spring of 1862.

S. Callehan testifies:

Knew claimant when he came home from the Army, and he was not an able-bodied man; he has lived with me most of the time since he came from the Army. Has suffered from disease of eyes and lungs from 1866 to the present time, January, 1878. I have purchased medicine for him and given him money to buy medicine for his eyes and lungs.

Dr. A. H. Kimbraugh, November 5, 1873, diagnosed the case of claimant:

Phthisis pulmonalis; cough severe at times. * * * He is unable to perform hard labor, also suffers from weak eyes.

Your committee are of the opinion that this is a meritorious case; while there are some discrepancies in dates of claimant's statements, yet, as he is an unlearned, though apparently honest, man, they may be reconciled. The fact, however, remains that he entered the service well and hearty; that he became afflicted while in the service, and has continued so from his discharge up to the time, at least, that the evidence before us was given. We therefore report favorably upon his prayer, and recommend the passage of the bill (H. R. 805) granting a pension to William O. Morgan.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1560.

ELIZABETH LEEBRICK.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. G. R. DAVIS, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 814.]

The Committee on Invalid Pensions, to whom were referred the petition of Mrs. Elizabeth Leebrick and bill (H. R. 814) for the relief of Elizabeth Leebrick, having had the same under consideration, beg leave to submit the following report:

It appears, from an examination of the petition and accompanying papers, that the petitioner is a resident of Quincy, State of Illinois, and now seventy-eight years of age, the daughter of Jacob Angus, a revolutionary soldier of the State of Pennsylvania.

The evidence before your committee shows that this lady rendered valuable aid to the soldiers, as nurse and attendant, in the different hospitals in the Southwest during the war of the rebellion, which were entirely gratuitous on her part, and that she spent of her own private means about the sum of $700 in this charitable work.

Dr. R. Nicholls, Surgeon-General hospital, Quincy, Ill., June 8, 1863, states:

> Mrs. Leebrick having told me that it is reported that she receives pay for her services to the soldiers, I certify that never to my knowledge has she received any compensation for the valuable services rendered by her to this hospital.

Newton Flagg states, May 20, 1869, in a letter to the petitioner (dated Quincy, Ill.):

> I was stationed at this place as assistant quartermaster and acting commissary of subsistence during the late war. I can testify that during all that time you were the constant and devoted friend of all our soldiers, but more especially of those who were sick and suffering. I know that the greater part of your time for four years was spent in their service, and that by your efforts many thousands of dollars were gathered and distributed to the sick and wounded, not only in our own hospital, but to those in the field.

There are other letters showing the character and value of the service rendered by the petitioner, especially to our invalid soldiers, and it is shown that she met with a severe accident while assisting in the transfer of the sick and wounded after the battle of Shiloh, to Quincy, Ill.

The petitioner is partially blind, having lost the sight of an eye, and her husband has been totally blind for eight years. An application was made three years ago to the Pension Office for her relief, but as

there is no law allowing a pension to this class of cases, nothing be done there.

Your committee are of the opinion that this is a meritorious cas in view of the fact that there have been precedents established co similar cases, we therefore report favorably upon the prayer of th tioner, and recommend the passage of the bill (H. R. 814) for the of Elizabeth Leebrick.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1561.

FRANK O. CHAMBERLAIN.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2534.]

The Committee on Claims, having had under consideration the bill (H. R. 2534) for the relief of Frank O. Chamberlain, beg leave to report thereon:

It appears from the evidence that the claimant is the postmaster at Canandaigua, N. Y., and has been for nearly two years. The claimant in his sworn petition avers:

That he is, and for more than a year last past has been, the postmaster at Canandaigua, aforesaid:

That the post-office at Canandaigua aforesaid is located in a building erected for that purpose, and partially owned by the United States, as your petitioner is informed and believes; that there is no vault connected with said post-office, and no safe has ever been furnished by the government, but that your petitioner has been in the habit of keeping the money, stamps, and other valuables pertaining to said office in a large iron safe furnished by your petitioner.

That on the evening of the 10th or the morning of the 11th of September, 1879, said post-office was burglariously entered, the said safe blown open, and the contents thereof taken and carried away. That included in the property then taken were United States four per cent. funding certificates, belonging to your petitioner personally, to the amount of $1,200, and United States postage stamps and moneys received for stamps, &c., which belonged to the United States Government, to the further amount of $1,039.09.

That immediately upon learning of such burglary your petitioner employed detectives, expended large sums of money, and made every effort in his power to find the burglars and obtain the property and money so carried away, but that such efforts have proved wholly futile, and that no discovery has been made leading to the detection of the parties who committed the burglary, nor has any portion of the property ever been recovered.

And your petitioner further states that such robbery was committed wholly without fault on his part, and that every reasonable precaution had been taken by him to prevent such an occurrence,

The report of the special agent of the Post Office Department upon this case is as follows:

The Canandaigua post office is in a building partially built by the government, and for which they have permanent lease for the post-office room, the court room, and marshal's office. The building is controlled by the board of supervisors. Mr. Chamberlain made an effort to have the hallways closed at night; but, as several of the county officers are located in the building, the supervisors refused to accede to his request.

On the evening of September 10, 1879, the office was entered by burglars. The door leading to the office from the hallway was forced, the safe was blown, and the stamps &c., as shown on the annexed sheet, were stolen. The safe was placed in the office by Mr. Chamberlain. Evidence that he considered it perfectly safe is shown by the fact that he had individual government bonds in the safe to the amount of $1,200; these were taken with the stamps.

I supposed that John McGinnis, arrested for burglarizing the Van Ettenville post

office on the night of September 11, was a party to the Canandaigua burglary, but I am now of another opinion.

Mr. Chamberlain has done all in his power to assist in arresting the burglars, but so far without result.

This is a case I consider worthy of Congressional relief.

Respectfuly submitted,

J. McDANOLDS,
Special Agent Post Office Department.

Stamps, &c., stolen by burglars from the Canandaigua post office, night of September 10, 1879.

Stamps		$733 68
Stamp cash		183 65
Cash received for stamped envelopes		43 55
Cash received for box rents		4 00
Money-order cash		68 21
		1,033 09
Less amount paid D. M. Hulse	$7 25	
Less pension check No. 124693	54 00	
		61 25
		$971 74

Of above amount $87 $\frac{67}{100}$ was postage due stamps.

Six registered letters were also stolen.

Respectfully submitted,

J. McDANOLDS,
Special Agent Post Office Department.

Under the circumstances, your committee is of the opinion that the claimant is entitled to relief, and therefore report said bill back and recommend its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1562.

CHARLES S. HEMIUP.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3026.]

The Committee on Claims, having had under consideration the bill (H. R. 3026) for the relief of Charles L. Hemiup, beg leave to report thereon:

It appears from the evidence submitted to your committee that the claimant has been the postmaster at Geneva, Ontario County, New York, since 1873; that some time during the night between October 8 and 9, A. D. 1879, the post-office at said place was burglariously entered by parties unknown and the safe blown open and the contents thereof abstracted and carried away; that the amount so taken was cash, $453.52; stamps, $176.39; postage-due stamps, $75; making a total of $704.91.

It further appears that the safe in use for the keeping of the post-office funds, stamps, &c., was one furnished by the government for the office in 1873. That the office was duly closed and the safe locked up on the evening of October 8, 1879; that on the morning of the 9th, between six and seven o'clock, the office was found broken open and the safe plundered.

The special agent of the Post-Office Department, in a report to his chief, D. B. Parker, esq., under date of January 27, 1880, says:

I visited Geneva on the 6th instant, but have been so. busy since that I neglected to report. The office was burglarized on the morning of October 9th last, by forcing the rear door with a jimmie. Said door was secured by both lock and bolt. The safe used was Miller's of Baltimore, furnished by the department. It was drilled in a professional way and blown open with powder. The bulk of stamps were kept by the postmaster *in a bank*. No money-order funds were lost, as they were compelled to borrow from the stamp fund to pay orders presented. We figured the value stolen as follows:

Cash	$453 52
Stamps	176 39
Due stamps	75 00
	704 91

To some extent the amount of stamps stolen was estimated, but I am satisfied the estimate is below rather than above. The money was deposited in what was supposed to be a burglar-proof chest, inside the safe. This had been broken with a heavy iron sledge.

I think the postmaster should receive relief through Congress. Joseph Nelson (a professional thief, indicted last week for burglarizing the Painted Post post-office) informed me that the Geneva office was burglarized by George Baker, of New York, and James Abrams, of Utica, N. Y. The evidence would be gone and I can see no object in following them at present.

J. McDANOLDS,
Special Agent Post-Office Department.

The statement of the claimant, under oath, submitted to your mittee, is very full. It is very clear and emphatic in the disavo any negligence or want of care upon the part of the claimant. (ant also alleges that he has made diligent efforts to discover th glars and recover the property, without success.

The claimant's statement is also supported by the affidavits two clerks employed in the office, Messrs. William G. Hemiu Martin H. Smith.

After a careful consideration of all the evidence, your committ of the opinion that the claimant is entitled to relief, and therefore back said bill and recommend its passage.

C

1880.—Committed to the Committee of the Whole House and ordered to be printed.

CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4702.]

ommittee on Claims, to whom was referred the bill (H. R. 4702) for relief of James Parks, have had the same under consideration, and ctfully submit the following report:

ppears that on the night of the 24th of March, 1879, the post-office ktown, Tenn., whereof James Parks was postmaster, was broken nd robbed of a sum of money amounting to about $30. From a made to the chief special agent at Washington, on June 11, 1879, n B. Minnis, special agent Post-Office Department at Knoxville, it appears that Samuel A. Smith, the guilty party, was arrested ld for trial in the State court. About $20 in postage funds was

No other government or public property was taken. This says: "Col. James Parks, postmaster, used extraordinary dili- and faithfulness in bringing to justice the thief, and if he can, the circumstances, be relieved from accountability, I shall be id."

s claims that he was damaged by the robbery to the extent of nd your committee recommend that the same be allowed him, and e bill do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1564.

ABRAM VAN DUYN, DECEASED.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5444.]

The Committee on Claims, to whom was referred the bill (H. R. 5444) for the relief of the heirs of Abram Van Duyn, deceased, together with the accompanying papers, having had the same under consideration, submit the following report:

It appears from a communication from the Auditor of the Treasury for the Post-Office Department, dated May 4, 1880, addressed to a member of your committee, that the records of that office show that Abram Van Duyn (now deceased) was employed as assistant postmaster at Princeton, N. J., during the period from October 1, 1872, to February 28, 1873, at a salary of $500 per annum. He was employed by Ebenezer Wright, then postmaster, who was duly authorized by the Postmaster-General to expend the sum of $500 per annum for that purpose. Said Wright failed to claim credit in his quarterly returns for the sum of $125 due him for clerk hire on account of the fourth quarter 1872, and for the sum of $81.90 due for the months of January and February, 1873. Although Mr. Wright was a defaulter in a considerable sum, the above-named officer (Auditor of the Treasury for the Post-Office Department) says, "It was legitimate and proper that the expenses necessary to a proper discharge of the business of the office should have been promptly paid as they became due. In conclusion, it may be stated that the sum of $206.90 due said Van Duyn for services rendered as assistant postmaster at Princeton, N. J., was never paid by his employer, ex-Postmaster Wright, and that the fund out of which this amount should have been paid was carried into the United States Treasury as an unexpended balance." In a previous letter from the same office, dated January 23, 1878, referring to the above-mentioned claim, the Auditor says, "There is but one course now open, and that is an application to Congress for relief. His claim appears to be perfectly just, and relief could doubtless be obtained without difficulty." Your committee therefore recommend that said bill be passed.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1565.

PAY AND BOUNTY TO COLORED SOLDIERS AND SAILORS.

MAY 21, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6265.]

The Committee on Claims, to whom was referred the memorial of Richard Suggs, claiming the amount still to be due to him for his pay and bounty money, he having been defrauded of the same by the agents of the late Bureau of Refugees, Freedmen and Abandoned Lands, having had the same under consideration, submit the following report:

The following extract from a letter dated Adjutant-General's Office, February 1, 1877, will explain this case:

A settlement of the claim of this man, Richard Suggs, was made by certificate No. 576796 for $200, and it appears from the records of the late Bureau of Refugees, Freedmen, and Abandoned Lands that the amount thereof, less $10 legal fee, was sent for payment through Maj. Ben. P. Runkle, U. S. A., disbursing agent for the State of Kentucky, in March, 1871, and that a voucher dated July 6, 1871, was received from Major Runkle and accepted by the officers of said bureau as evidence of the payment to claimant of the amount. Richard Suggs, however, denied having received the amount, and after an investigation of this case and others, found the basis of charges against Major Runkle upon which he was tried by court-martial and cashiered. The evidence before said court, and also before the late Howard court of inquiry, fully established the fact that the money of this man was not paid to him.

The Second Auditor of the Treasury, referring to a copy of the above-mentioned letter, under date of April 4, 1879, made upon the back thereof an indorsement, of which the following is an extract:

Respectfully returned. The facts in this case and the opinion of this office in relation to it, and to a very large number of cases of a similar character, are fairly set forth in this paper.

The following is an extract from the report of the Second Auditor of the Treasury for the year 1878 upon this subject:

I have now to state that the cases against the late commissioner have been brought to an issue and judgment rendered against the government, so that if any further action is to be had, looking to the relief of these colored people who claim to have been defrauded of their bounty money, Congress must take the initiative either by passing upon the merits of individual cases, by referring them to the Court of Claims, or by making the requisite appropriation and empowering the accounting officers to resettle the claims after it shall have been clearly established that the claimants have neither receipted for nor received their money nor derived any benefit therefrom.

Your committee are of the opinion that the claimant has never been paid the amount due him by reason of the fraudulent conduct of the agent of the government, who was intrusted with the funds for the purpose and charged with that duty; and as it appears from the foregoing extract from the report of the Second Auditor of the Treasury that a

large number of colored men have in like manner been defrauded, your committee are of the opinion that a general act should be passed which will embrace all who have failed to receive the amounts due them respectively, and have accordingly prepared a bill to accompany this report, based upon the suggestion of the Second Auditor, as contained in said extract, empowering the proper accounting officers of the Treasury to resettle such claims after it shall have been clearly established that the claimants have neither received their money, nor receipted therefor, nor derived any benefit therefrom, and we recommend that said bill do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1566.

SUNDRY CIVIL APPROPRIATION BILL.

MAY 21, 1880.—Recommitted to the Committee on Appropriations and ordered to be printed.

Mr. BLOUNT, from the Committee on Appropriations, submitted the following

REPORT:

[To accompany bill H. R. 6266.]

In presenting to the House the bill making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1881, and for other purposes, the Committee on Appropriations herewith submit the following report:

The estimates upon which the bill is based are to be found on pages 123 to 134, 146 to 150, 157 to 177, all inclusive, of the Book of Estimates, and aggregate, in all, the sum of $24,374,026.41, of which amount the committee, after thorough consideration of the needs of the service, recommend in this bill $20,729,987.00. The appropriations for sundry civil expenses for the fiscal year ending June 30, 1880, amounted to $19,474,033.51, or $1,255,953.49 less than is recommended by the committee in this bill for the fiscal year 1881.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1567.

CARRIAGE OF PASSENGERS BY SEA.

MAY 21, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. DEUSTER, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5705.]

The Committee on Commerce, to whom was referred the bill H. R. 5705, "A bill to regulate the carriage of passengers by sea," have considered the same, and unanimously recommend the speedy adoption of the same, for the reason and on the ground that, according to the annexed official correspondence, it evidently appears that the law now upon the statutes for the protection of emigrants on the high seas do not, under a judicial decision in the New York courts, apply to steamships, but only to sailing-vessels. Emigrants are now using almost exclusively steamships for transportation. The necessity of the passage of this bill is fully set forth and explained in the following letters:

TREASURY DEPARTMENT, *April* 22, 1880.

SIR: I have the honor to inclose herewith a copy of a letter from the surveyor of the port of New York, dated the 2d instant, together with a copy of a letter of the 7th of January last from the United States district attorney of New York, relative to the passenger laws of 1855 and 1864. The letter of the surveyor refers to bill H. R. 5705.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

HON. JOHN H. REAGAN,
Chairman Committee on Commerce, House of Representatives.

CUSTOM HOUSE, NEW YORK CITY,
Surveyor's Office, March 2, 1880.

SIR: Sections 4252 to 4277, inclusive, of the Revised Statutes, relating to the carriage of passengers in vessels, are, in the main, a re-enactment of the passenger law approved March 3, 1855, and the act approved July 4, 1864. These acts were passed at a time when emigrant passengers were carried mostly in sailing-vessels, but at this time such passengers are carried almost exclusively in steamships.

Many violations of the passenger act have been, from time to time, reported from this office to the collector, especially for bringing an excess of passengers. As I had not learned that prosecutions for such violations had resulted in any punishment for the offenses, I requested the collector, referring him to the last reported violations, to make inquiry of the United States district attorney in relation thereto, and the collector is informed by the United States district attorney that the courts have decided that the passenger act does not apply to steamships. A copy of the district attorney's letter is herewith transmitted. It therefore seems that at present there is no effective law of the United States to regulate the carriage of emigrant passengers in steamships—the only vessels that bring *such passengers.*

The overcrowding of vessels, and the lack of proper accommodations and provisi for the maintenance and comfort of emigrant passengers while on shipboard, l recently been a subject of newspaper articles, severely and unjustly criticising t neglect of the United States officials to prosecute alleged violations of the passen laws. The matter has also been brought to my attention by Hon. S. S. Cox, a Rep sentative from this city, and I have been requested by him to furnish him with su facts and such suggestions in relation thereto as would enable him to have the s ject duly presented to Congress. In view of the expected great increase of im gration during the year, more especially from Germany, and after a careful exa nation of the Revised Statutes and of the British laws regulating the carriage passengers by sea—("the passenger acts 1855 and 1863")—and finding it somewl difficult to suggest amendments to the sections of the Revised Statutes, I have p pared a new bill, which embraces all the essential provisions of the Revised Statu and such provisions of the British laws as seem to be necessary to enable prosecuti for a violation of certain of those laws to be had in the United States.

The first section of the bill changes the method of determining the amount of sp to be allowed to each passenger from superficial to cubic measurement, to conform the universal method of admeasurement of vessels for tonnage. The change does n materially affect the amount of space allowed to each passenger—as most steamsh are at least 7 feet high between decks. The other sections of the bill are a consoli tion of the statutes, with some provisions taken from the British law.

The bill is submitted for your consideration.

I have forwarded a copy of the bill to Mr. Cox, and have asked him to confer w you in relation thereto.

Very respectfully, your obedient servant,

CHARLES K. GRAHAM,
Surveyor

Hon. JOHN SHERMAN,
Secretary of the Treasury.

OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, January 7, 188(

SIR: I duly received your letter of the 5th December, ultimo, reporting the case the master of the steamship General Werder for violation of the passenger act. also inquire as to the status of various cases arising under said act, reported to t office from 1866 to 1874.

In reply, I would say that libels were filed in a large number of said cases, but w overruled, on the ground that the act in question does not apply to steam-vessels, only to sailing-ships. The leading case is that of the steamer Manhattan, reporte Benedict, 88. This decision was affirmed on appeal to the circuit court. The ot cases were thereupon dropped.

Under this interpretation of the law, I am of opinion that a prosecution could be sustained against the master of the steamer General Werder.

Yours, very respectfully,

STEWART L. WOODFORD,
United States Attorney

Hon. E. A. MERRITT,
Collector of the Port.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1568.

DUFFY vs. MASON.

MAY 21, 1880.—Ordered to be printed.

Mr. COLERICK, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested election case of Sebastian Duffy against Joseph Mason, from the twenty-fourth Congressional district of New York, respectfully submit the following report:

The election out of which this contest arises occurred on the 5th day of November, 1878, in the twenty-fourth Congressional district of the State of New York, composed of the counties of Oswego and Madison. The official returns show that the contestee received for Representative in Congress from said district 12,043 votes, and the contestant 11,307, making the contestee's official majority 736.

The grounds of contest are specified in the notice of contest, of which the following is a copy:

Notice of contest.

Hon. JOSEPH MASON,
Hamilton, Madison County, New York:

SIR: Please take notice that I shall, in the manner provided by law and the rules and precedents of the House of Representatives of the United States, contest your election and your certificate of such election as a member of the Forty-sixth Congress of said United States from the twenty-fourth Congressional district of the State of New York, on the following grounds, to wit:

First. That you did not receive a majority of the legal votes cast at the election held in said Congressional district on the 5th day of November last, but, on the contrary, that I did receive a majority of such votes.

Second. That your election was effected and procured by force, fraud, intimidation, promises of favor, corruption, the buying of votes and voters, and other corrupt and illegal means used by you and in your behalf; and that your certificate of election as such member of Congress was and is based upon and the result of such force, fraud, intimidation, promises of favor, the buying of votes, and other corrupt and illegal means used by you and in your behalf.

Third. That your election was procured by illegal votes and illegal voting in your behalf, and by your procurement or the procurement of those interested in your election.

Fourth. That your certificate of election is invalid for the reasons stated in the second specification herein.

Fifth. That I was, on said 5th day of November, 1878, legally elected as such member instead of yourself, and am entitled in your stead to a seat in said Forty-sixth Congress.

Dated Pulaski, December 23, 1878.

SEBASTIAN DUFFY.

The contestee insists that the grounds of contest are not stated with that precision and certainty *required by* the statute which authorizes

and regulates the procedure in contests of this nature. The objectio urged by the contestee are presented in his answer, as follows:

II. Your notice in writing served upon me December 26, 1878, is insufficient and i complete under the statute and practice in such case made and provided, in that does not specify particularly the grounds upon which you rely; that is to say, yo charges that my election was procured by force, fraud, intimidation, promises favor, the buying of votes and voters, and other corrupt and illegal means used me and in my behalf, and that my election was procured by illegal votes and illeg voting, and by my procurement or the procurement of those interested in my electio and grounds of contest therefor respectively, do not state who was forced to vote f me, and what fraud contributed to my election, and who was intimidated, or in wh manner, place, town, city, or county such intimidation was had, and to whom or i what manner promises of favor were made, and what votes and voters were bought or where and when such votes or voters were so bought, and what other corrupt an illegal means were used by me and in my behalf, and by what illegal votes and ille gal voting by my procurement or the procurement of those interested in my election you were prejudiced, and who were so interested, and in what election district, town, city, or county such persons reside and perpetrated such acts complained of.

The statute provides:

SEC. 105. Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the membe whose seat he designs to contest, of his intention to contest the same, and in such no tice shall specify particularly the grounds upon which he relies in the contest. (Re vised Statutes of the United States, p. 18.)

McCrary, in his Law of Elections, section 343, referring to this sta ute, says:

A good deal of discussion has arisen as to what is to be understood by the wor "specify particularly the grounds on which he relies." It is evident, however, th these words are not easily defined by any others. They are as plain and clear as a terms which we might employ to explain them. Cases have arisen, and will ag arise, giving rise to controversy as to whether a given allegation comes up to the r quirement of this statute, and it must be for the House in each case to decide upon t case before it. It may be observed, however, that this statute should receive a reaso able construction, one that will carry out and not defeat its spirit and purpose. A perhaps the rule of construction which will prove safest as a guide in each case is thi A notice which is sufficiently specific to put the sitting member upon a proper defen and prevent any surprise being practiced upon him is good, but one which fails to d this is bad. (Wright *vs.* Fuller, 1 Bartlett, 152.)

The Houses of Congress when exercising their authority and jurisdiction to decid upon "the election returns and qualifications" of members are not bound by the tech nical rules which govern proceedings in courts of justice. Indeed, the statutes to b found among the acts of Congress regulating the mode of conducting an election con test in the House of Representatives are directory only, and are not and cannot b made mandatory under the Constitution. In practice these statutory regulation are often varied and sometimes wholly departed from. They are convenient as rul of practice and of course will be adhered to, unless the House in its discretion sha in a given case determine that the ends of justice require a different course of actio They constitute wholesome rules not to be departed from without cause. (*Ibid.*, se 349.)

While it is true that this statute should receive a liberal construction yet it will not do to permit parties to disregard its provisions. Th House, in sanctioning its violation in cases heretofore determined, ha created precedents that are now frequently and pertinently cited t justify similar infractions. This practice, if tolerated, will finally resu in the virtual abrogation of the statute. The only safe course to pursu is to require at least a substantial compliance with its provisions. W think that the notice of contest in this case is clearly insufficient. It i too indefinite and uncertain in its allegations. As was said in the cas of Bromberg *vs.* Haralson, (Smith's Digest of Election Cases, p. 355)–

It is too vague and uncertain to be good. The statute requires that the contestan in his notice "shall specify particularly the grounds upon which he relies in his con

test." It is impossible to conceive of a specification of the grounds of contest broader or more general in its terms. It fixes no place where any act complained of occurred. It embraces the whole district in one sweeping charge. This specification embraces three general grounds of complaint, not one of which possesses that particularity essential to good pleading.

But the contestee in this case is justly estopped by his own act and conduct from assailing the sufficiency of the notice of contest, and its defects have been by him waived. The record contains the following agreement:

UNITED STATES OF AMERICA:

In the matter of the contested election of Joseph Mason, Representative-elect to the Forty-sixth Congress from the twenty-fourth Congressional district, State of New York:

It is hereby stipulated and agreed, by and between Sebastian Duffy and Joseph Mason, contestee, through their respective attorneys, that all affirmative evidence heretofore given or which may hereafter be given be, and remain in this contest as a part of contestant's case, and that contestee, in consideration of this consent and stipulation on his part, have sufficient time after the expiration of the statutory limit of ninety days in which to give evidence in answer to such new matter so put in evidence, to the end that simple and exact justice be done to all parties, and that contestant have reasonable time to put in evidence in rebuttal only to such evidence as the contestee may give after said ninety days shall have expired. * * *

Dated April 10, 1879.

S. D. WHITE,
Attorney for Duffy.
JOHN J. LAMOREE,
Attorney for Joseph Mason, Oswego County.
D. N. WELLINGTON,
Attorney of Joseph Mason for Madison County.

That such defects may be waived has been determined by at least two decisions of the House. (See Otero *vs.* Gallegos, 1 Bartlet, 178, Bromberg *vs.* Haralson, Smith's Digest of Election Cases, p. 356.)

If these defects had not been waived we would feel fully justified, by reason of the insufficiency of the notice, in dismissing this case or excluding the evidence offered in support of the alleged grounds of contest; but in view of this waiver, we are compelled to examine the evidence and determine the merits of this contest.

We will consider the grounds of contest *as stated in the contestant's brief*, and in the order in which they are therein presented, as follows:

On the part of the contestant, it is claimed that a sufficient number of votes were withheld from him and controlled by and cast for the contestee through bribery and the corrupt and illegal use of money by contestee, his agents and servants, and those working in his interest, with his consent, and through intimidation practiced by them, to far more than overbalance these majorities.

The means and appliances used to bring about this result were:

First. The system of bribery and intimidation established by Thomson Kingsford, the manager of the Oswego Starch Factory, a powerful corporation, by which the employés of said Kingsford and of said Starch Factory Company, numbering nearly or quite one thousand voters, have been persuaded by steady employment, at good wages, or the hope thereof, and intimidated by the fear of being discharged from such employment and deprived of the same in future, to vote the ticket to which said Kingsford was favorable and on which contestee was a candidate.

Second. The raising and expending large sums of money by the contestee and those acting in concert with him, with his knowledge and consent, in violation of the statutes of the State of New York, through the agency and instrumentality of the committees of the political organization of which he was the candidate, for the purpose of illegally influencing the voters to attend the polls and vote for said contestee and the candidates for other offices running on the same ticket with him.

Third. The expenditure of large sums of money by political leaders of the party of which the contestee was a candidate, at and about the time of the election, and in giving employment to electors who were day laborers, with a view to exercise a control over their *votes as an incident of their employment.*

Fourth. Bribery of voters to vote for the contestee, and the buying of the influence of persons controlling or supposed to control the votes of other persons, to procure votes for contestee, and other corrupt and illegal use of money practiced by the contestee, his clerks, agents, servants, and attorneys, and those acting in concert with him, other than the regular committees of the political party of which he was the candidate, and with his assent and approval, in promoting his election.

Fifth. That a large number of persons who were not legal voters voted for the contestee, and their votes are credited to him in the count. [See contestant's brief, pages 2 and 3.]

I.

That rumors have prevailed in the city of Oswego for many years past that Thompson Kingsford, and others connected with him in the management of the Oswego Starch Factory, improperly influence their employés to vote the Republican ticket is clearly shown by the evidence, and we have no doubt that many of those persons who have testified as to the prevalence of these rumors sincerely believe that such an influence is exercised. It is necessary for us to ascertain and determine from the evidence the *truth* of these rumors and not the bare *existence*, as they may have been entirely unfounded and untrue. The charge that such a system prevailed at the time of the election controversy must be established by competent proof, rendered by sworn witnesses, personally cognizant of the facts upon which the charge is based. All the witnesses examined by the contestant, except three, to whose evidence we will hereafter refer, frankly admit that they have no *personal* knowledge of the existence of such a system and that the only information possessed by them upon that subject was solely derived from these rumors and from statements made to them by persons professing to have actual knowledge of the facts, none of whom excepting the three above referred to, were called by the contestant as witnesses to prove the truth of their assertions, while, on the other hand, the contestee examined as witnesses a large number of the employés of the factory, who positively deny that any such system ever prevailed there, and declare that no improper influence has ever been brought to bear upon the employés affecting their political action, and that they do not know of an instance where persons there employed and desiring to vote the Democratic ticket, have been deterred from doing so by fear or apprehension that they might be discharged from employment should they do so.

It is our duty to reject all the evidence that has been offered relative to the existence of the rumors to which we have alluded, as it is clearly incompetent, and we must, for the same reason, discard all evidence relating to voluntary statements made by persons not under oath as witnesses, as all such *hearsay* evidence is inadmissible.

The rule that we apply in rejecting this evidence is stated in 1 Greenleaf on Evidence, p. 115, thus:

> Hearsay evidence is uniformly incompetent to establish *any specific fact which in nature is susceptible of being proved by witnesses who speak from their own knowledge.* The it supposes something better that might be adduced in the particular cases is not the only ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced under cover, all combine to support the rule *that hearsay evidence is wholly inadmissible.*

None of the evidence excluded by us comes within any of the exceptions to the rule above stated, and this rule has often been applied by the House of Representatives in cases of this character.

The application of this rule results in the rejection of all the evidence introduced by the contestant in support of the first ground of his co

test, save that rendered by Daniel Sweeney, Alexander Lemmon, and Hiram Hammond, all of whom were, at different times prior to 1878, employed in the factory, and who claim that they were discharged from their employment by reason of their political sentiments and affiliations.

Daniel Sweeney testifies that in the fall of 1862, *eighteen* years ago, he was discharged by Kingsford because he refused to vote for Wadsworth, the Republican candidate for governor of the State of New York; that he had worked in the factory for fourteen years continuously, and it was the only occasion that he was ever spoken to by Kingsford on the subject of voting. (See Record, p. 202.)

Alexander Lemmon testifies that in 1873 or 1874 he was requested by Kingsford "to go to the polls and peddle tickets for him," and that he was discharged from his employment because he was accused of "peddling Democratic tickets with Republican heads on." (See Record, p. 144.)

Hiram Hammond testifies that in 1876 Kingsford expressed his desire that witness should vote for Hayes for President, which he promised to do, but voted for Tilden, and that in the latter part of December, 1878, at the close of the year's work at the factory, he was discharged from his employment. (See Record, p. 987.) That he had worked at the factory "off and on" for fourteen years, and that the occasion to which he alludes is the only time that Kingsford ever talked to him on the subject of politics (p. 993).

These are the only instances, extending over a period of *sixteen* years, where it is shown by competent evidence that Kingsford or any other person interfered in any manner with the employés of the factory in the free and unrestrained exercise by them of the elective franchise. There is no evidence in the record, that we have discovered, showing a single instance of such interference on the part of Kingsford or any other person connected with the management of the factory, relating to the election in controversy.

It is proper for us to say that evidence has been presented by the contestee showing, or tending to show, that Sweeney, Lemmon, and Hammond were discharged for other than political causes, namely, that Sweeney was discharged on account of his intemperate habits (see Record, pp. 209, 361), and Lemmon for like cause and for gross negligence (Record, p. 535). Hammond admits on his cross-examination that four other employés were discharged at the time of his discharge, two of whom were *Republicans*, and that the cause assigned by the foreman for their discharge was that the work was insufficient for the entire force then employed in the factory. (See Record, p. 994.)

If such a system does in fact exist, it is deplorable and merits the severest censure. Those engaged in such practices richly deserve the just contempt of all who love liberty and despise tyranny, and they should be punished by the State whose laws they so grievously offend. But the evidence presented in this case is insufficient to authorize us as judges, governed by law, to declare that such a system actually prevailed in the Oswego Starch Factory, at least in 1878. If we accept as true the rumors that prevailed as to its existence, still the evidence is incomplete, as it wholly fails to furnish any data by which the number of voters affected by it can be ascertained; and even excluding the ballots of all the voters then employed in the factory, which is estimated by witnesses at 150 to 200, it would not affect or change the result of the election, as the contestee's official majority is 736.

II.

The contestant, in his brief (p. 25), says:

Under our second general heading, we call attention to the statute of the State New York regulating elections; the acts of the county committees of the party (who candidate contestee was) in violation of those statutes; the privity of the contestee those violations, and their effect upon the result of the canvass.

That part of the statute in question which it is claimed was violated is found in v ume first of Banks & Brothers, sixth edition of the Revised Statutes of the State of N York, on page 452, being §§ 6, 7, and 8, of title 7, chapter 6, part 1, of the revised st utes, and reads as follows:

"§ 6. It shall not be lawful for any candidate for any elective office, with intent promote his election, or for any other person, with intent to promote the election of a such candidate, either—

"1. To provide or furnish entertainment at his expense to any meeting of electo previous to or during the election at which he shall be a candidate; or,

"2. To pay for, procure, or engage to pay for, any such entertainment; or,

"3. To furnish any money or other property to any person for the purpose of beir expended in *procuring the attendance* of voters at the polls; or,

"4. To engage to pay any money, or deliver any property, or otherwise compensa any person for procuring the attendance of voters at the polls; or,

"5. To contribute money for *any other purpose intended to promote an election of a particular person or ticket*, except for defraying the expenses of printing, and the circ lation of votes, hand-bills, and other papers previous to any such election, or for CO VEYING *sick, poor, or infirm* electors to the polls.

"§ 7. No person shall fraudulently or deceitfully *change or alter* a ballot of a elector, nor shall furnish an elector any ballot containing more than the prop number of names, or cause any other deceit to be practiced with intent fraudulent to induce such elector to deposit the same as his vote, and thereby to have the sar thrown out and not counted.

"§ 8. Every person offending against the provisions of this act shall be deem guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty d lars, or by imprisonment not exceeding six months."

We have carefully examined all the evidence introduced by bo parties, for the purpose of ascertaining the amount of money raised ar expended "through the agency and instrumentality of the committe of the political organizations" of which the contesting parties were th candidates, and the purposes for which it was used, and we herewit present a synopsis of the evidence upon the subject:

Charles North testifies that he was the chairman of the Republica county committee of Oswego County in the fall of 1878, and had th general charge of the conduct of the election on the part of the Repul lican party, and that the committee obtained funds for the campaign b contributions from the Republican candidates, office-holders, and othe "*patriotic* citizens," and that these assessments were proportioned t the supposed necessary expenses of the campaign, and that the pu poses for which the committee were expected to furnish money was t pay the expenses of public meetings and speakers distribute paper and documents, print and distribute ballots on election day, and furnis a small sum to each town and ward committee for the purpose of ge ting the aged, poor, and infirm voters to the polls, and that money ha been raised and expended by the Democratic county committee for th same purposes and in the same manner, and that this had been th practice of both parties as long as he has had any acquaintance wit political affairs in that county. That such an assessment was made b the Republican county committee of Oswego County in the fall of 187 and that the contestee, as the Republican candidate for Congress i that district, was assessed $200 by that committee, which he paid t the witness, as the chairman of the committee, and that it was used fo said purposes, and no other, (Record, pp. 553 and 554); and that fro *ten to twelve* hundred dollars had been raised by the committee in th

fall of 1878 for said purposes that passed through his hands, (Record, p. 557.)

James Dowdle testifies that he was the treasurer of the Greenback county committee of Oswego County; that at a meeting of said committee, at which the contestant was present, it was agreed that each candidate should pay for printing tickets and handbills and circulating them, and that no money should be raised except for those purposes; and that an assessment was afterwards made on that basis, and that contestant was assessed $50, which he paid, and that the money so raised by the committee was used for said purposes. (See Record, p. 975.)

John A. Barry testifies that he was the treasurer of the Democratic county committee of Oswego County, and that all moneys raised by that committee for the purpose of carrying on the campaign come into his hands as such treasurer, and that $140 was raised for that purpose, and was used in paying for the printing and distribution of tickets in the county, and was raised by the assessment of the committee upon Democratic candidates, and that the contestant was assessed $25, which he paid. (See Record, p. 1037).

Edwin S. Barker testifies that he was the chairman of the Republican county committee of Madison County. That the committee assessed the contestee $200 to pay campaign expenses, which he paid. That all the assessments made by the committee amounted to about $700. That the publishers of five Republican newspapers published in the county received $30 each, making $150; and that each town in the county received from $20 to $50 for the purpose of procuring teams to bring in the indigent voters, and these were all the disbursements made except $10 paid to Colonel Canter, a Republican speaker, to pay his fare to Auburn. There are fourteen towns in the county. That $550, being the balance of the $700 remaining after paying $150 to said newspapers, was distributed in these fourteen towns to be used in paying expenses in procuring teams and getting out the indigent voters, and to defray the expense in procuring speakers to address the people on the political issues. That he never heard any talk or suggestion that any of this money was to be used to buy votes or for any illegitimate purpose. (Record, pp. 921 and 922).

Alonzo E. Cherry testifies that he was chairman of the Greenback county committee of Madison County during the campaign of 1878, and that there was money placed in his hands during that campaign to be used for political purposes; that he received $200 of the contestant, being the amount of his assessment made by said committee; that other assessments amounting to $265 was paid; that the money received on these assessments of the contestant and others "was all paid out for legitimate business, livery bill and man to travel, printing, furnishing Irish World and documents we had printed, and the Utica paper. We distributed from 1,000 to 1,200 of the Utica paper weekly, 200 copies of the Irish World, besides a large quantity of other papers; also, $40 for one meeting, hall, and band when Duffy made his speech at Oneida." (See Record, p. 728.)

Theodore Leonard testifies that the contestant paid to Mr. Lippitt, as chairman of the Democratic county committee of Madison County, $100, for which sum he had been assessed by the committee. (See Record, p. 259.)

By this evidence it appears that the contestee paid assessments to the amount of $400 and the contestant $375. That it was proper for the candidates to make contributions or pay these assessments is conceded by the contestant. The *complaint is that* a portion of the money so

paid by the contestee was used by the committees to whom it was p for purposes prohibited by the statute, namely, "in procuring the tendance of voters at the polls" who were neither "sick, poor, or infirm and in paying the expenses of public meetings and speakers. That so of the money was used for these purposes is clearly shown by the ev dence. The contestant seeks to hold the contestee responsible for t acts of the members of the committees representing the Republica party in the district who violated this statute, and in the absence of an proof showing, or tending to show, that the contestee directed or autho ized the expenditure of the money contributed by him for the purpose forbidden by the statute. A principal is not liable for the illegal act of his agent, unless done at his instance, or with his knowledge and as sent. Good faith and innocence are always presumed. If A intrusts I with money to be used by him for certain lawful purposes, and B, with out the knowledge and consent of A, diverts the money from the pur poses for which it was to be applied, and uses it for immoral or illegal purposes, A cannot be held liable for the misconduct of B. Tha the contestee had the right to contri ute and pay to these commit tee's money to be used by them for purposes authorized by the statut is not controverted by the contestant, and in the absence of opposin proof the presumption exists that he did not authorize its expenditu for purposes prohibited by the statute. If the statute was violated i offenders are by the provisions of the statute subject to punishmen Under the rigid, illiberal, and unreasonable construction placed up this statute by the contestant, it is even unlawful for a candidate or h friends to rent a hall for a political meeting, procure music, or empl a speaker to discuss the political issues, because it may tend to promo the election of the candidate, and if such a meeting is held, in dis gard of this statute, the legal voters who attend it are subject to puni ment therefor by the forfeiture of their votes, regardless of the res that may have been produced by the charms of the music or the e quence of the speaker; or if a legal voter, who is too indifferent or in lent to attend the election, is conveyed to the polls in a carriage provid for that purpose by the committee of the party of which he is a memb it affords sufficient cause for challenging his vote to show that he w neither "sick, poor, or infirm," and that he was able to walk or pay his ride to the polls. To so construe the statute is absurd. If the p son who attends such meeting or is so conveyed to the polls is a leg voter his vote must be received and counted. We cannot punish leg voters by disfranchising them because members of political committe have possibly violated the statute, as construed by the contestant. T evidence wholly fails to show that the money was used to corrupt improperly influence the voters. The supreme court of New York, the case of Hurley *vs.* Van Wagner, 28 Barb. 109 (1858). in construi this statute, said:

> A person who pays money for his board, or railroad or steamboat fare, while going or from a political meeting, *or who pays for the use of a room for such meetings, or for lights or attendance thereat,* in one sense contributes money to promote the election o particular ticket or candidate. But is it a contribution of money in the sense intend by the act? Did the legislature intend to prohibit and punish as a misdemea every expenditure of money which might indirectly promote or be intended to prom the election of particular candidates. Public meetings, large assemblies of the peop constant and almost universal intercommunication, one with another, and journe from one part of the country to another, *are the usual and customary means* by which t election of particular candidates is made, and they necessarily involve the expenditu of large sums of money which may be said to be contributed. Is this the evil that t act was designed to suppress? If it was, it may be safely said to have utterly fail of its object, for during the twenty-nine years it has been upon the statute book har

one attempt has been made to enforce it; and the evil practice, if it be one, has gone on and gained additional strength with each additional year. *I infer, therefore, that these are not the contributions in money forbidden by the act. If the payment of a sum of money for the use of a room in which to hold a public meeting for political objects, or for the lights used thereat, or for the attendance of a person to prepare such room and keep it in proper order, is a contribution of money to promote an election within the meaning of the statute,* so is the money a man may expend upon himself in the payment of tavern bills and the expenses of transportation, in going to and returning from such meetings, equally a contribution of money to promote an election; because all such expenditures tend to the same result, and the money is disbursed for the same object, and that is to aid in the election of a particular candidate or ticket. It is not possible to discriminate between them, so that to adopt the construction claimed is to impute to those who framed the law the most absurd intentions, or to give it an effect which they could not have contemplated.

Even if the law justified us in excluding the ballots of those voters who were conveyed to the polls, although neither "sick, poor, and infirm," yet we would be unable from the evidence to compute their number or determine for whom they voted, nor could we ascertain from the evidence whether the orators, under pay, who addressed public meetings in rented halls, converted lukewarm Democrats or indifferent Republicans into "stalwarts," and, if so, what ones, or how many?

III.

The only evidence introduced by the contestant in support of this charge is that rendered by Richard Grace, John C. Cooley, and David H. Judson, as follows:

RICHARD GRACE sworn.

1. Question. What is your age, occupation, and residence?—A. Answer. Age, thirty-three; occupation, mechanic; residence, No. 10 Yates avenue, eighth ward.

* * * * * * *

32. Q. Do you know whether the Oswego starch factory or Thompson Kingsford last fall at the time of the election were putting up or laying the foundation for a large building on west First street, in the city of Oswego?—A. Don't know personally. I saw Kingsford there superintending the work, and reputation said he was the proprietor.

33. Q. Where was this building you saw Thompson Kingsford superintending located?—A. On the west side of Oswego River, on the block formerly known as the new hotel block, on the north side of Seneca street, between First and Water streets.

34. Q. Can you tell about how many men there were at work on that building immediately before and after the fall election?

(Objection as No. 13.)

A. There were from two to three hundred men at work there at different times.

35. Q. Will you state whether there was *a current general report* in the city of Oswego at the time of the last fall election that Thompson Kingsford required all those men to vote the Republican ticket as a condition of being retained in employment?

(Objection as to No. 13.)

A. It was so *reported.*

37. Q. In your testimony here given did *you* regard the men working upon that building as in the employment of the starch factory company?

(Objection as to No. 13.)

A. I did.

38. Q. At what time did they commence this building?—A. Some time last September.

39. Q. State at what time, as near as you can, there were the most men at work on this building with reference to the time of election?

(Objection as to No. 13.)

A. The best of my recollection, about the middle of October.

40. Q. State whether about the same number of men were continued in employ from the middle of October until after election?

(Objection as to No. 13.)

A. There were.

41. Q. At about what time did they commence to reduce the number of men at work?

(Objection as to No. 13.)
A. A few days after election.

(See record pp. 186 and 187.)

Deposition of John Clark Cooley.

Witness being duly sworn, deposition taken in pursuance of notice filed:

2151. Question. Where do you reside? State your age, residence, and occupation. Answer. Resides city of Oswego, third ward; age, fifty-seven years; at present cam collector.

* * * * * * *

2202. Q. Do you know whether last fall, and within a month or two before his elec tion, Mr. Kingsford took into his employ a considerable number of other men engage in the construction of a building in the city of Oswego?—A. I do.

2203. Q. Do you know how long they were continued in his employ after the ele tion?—A. I think they were kept until the neighborhood of December or into Dece ber till it froze up.

2204. Q. Do you know about how many men?—A. No, I don't; a good many; pro ably seventy-five or more.

2205. Q. When was it, then, when you say you saw seventy-five men?—A. Some ti in October.

2206. Q. Do you know whether it was *generally understood* that the number was i creased just before election?—A. No, sir.

2207. Q. Was there a *current report* that all the voters working on that building we required to vote the Republican ticket last fall by Mr. Kingsford or the bosses of t work?

(Objected to as before; same disagreement.)

A. After election, *two or three* times I *heard* that they had been called upon to vo the Republican ticket. I don't know anything about *current report* at all, for I was out.

2208. Q. Who did you understand they had been called upon by?—A. *I understo* that Mr. Kingsford had had them called upon to see how they were going to vote.

(See record, p. 118.)

Cross-examination:

3107. Q. That building you understand Mr. Kingsford to be erecting for the occupa tion of O. M. Blanchard & Co. with their door, sash, and blind factory?—A. Yes.

3108. Q. That firm was burned out last summer, was it not?—A. Yes.

3109. Q. About how many men did you understand the firm of Blanchard & Co. t have employed in their business?—A. I have heard from seventy-five to one hundre and fifty.

3.10. Q. Did they not find it difficult to find any place to occupy, and for that reaso was it not feared that they would leave the city?

(Counsel for contestant: I object to it as irrelevant and immaterial, and has bee answered. Notaries disagree.)

A. All I know is what I saw in the papers. I saw it so stated.

3111. Q. And did you not understand that the committee on manufactures of th board of trade waited on Mr. Kingsford to induce him, if possible, to furnish a buildin for their occupation?—A. I have no recollection of it.

3112. Q. Did you not understand that this building in question by Mr. Kingsfor was commenced for that purpose?—A. Yes.

3113. Q. And did you not understand that from the commencement the work wa pressed forward with all the force that could be profitably employed until it wa stopped by the winter?—A. I did.

3117. Q. Who said to you after the election that the men employed by Mr. Kings ford on that building had been called upon by Mr. Kingsford to vote the Republica ticket?—A. I can't remember now.

3118. Q. Can you remember any time or place when anything of the kind was said?— A. I can't remember nowhere.

3119. Q. Can you swear that you heard anything of the kind said before the tria of this contest began in this room a fortnight ago yesterday?—A. I can, positively.

3120. Q. What was it you heard said?—A. The remark I heard was that Mr. Kings ford had had the men that was to work on the Blanchford building seen relative t voting the Republican ticket. That's all I did hear.

3121. Q. By whom was that remark made?—A. I can't tell you.

3122. Q. Can you tell anything of the time, place, or person, where, when, or by whon that remark was made?—A. I cannot.

3123. Q. How many times did you hear that remark made?—A. I have just answere that question by saying only once.

3124. Q. Why did you say, in answer to question 2207, that you had heard that said two or three times?—A. At that time my recollection may have been two or three times, but now, on reflection, I can recollect positively only once.
(See record, pp. 167 and 168.)

It will be observed that these witnesses do not profess to have any personal knowledge relative to Kingsford, or any other person, exercising, or attempting to exercise, any influence over the employés engaged in the construction of said building in requiring, inducing, or persuading them to vote for the contestee or the Republican ticket. They merely testify to the existence of a rumor that such influence was exerted over them. If any such rumor existed it was wholly without foundation, as is clearly and convincingly shown by the evidence produced by the contestee, to which we will hereafter refer.

The evidence upon which the contestant mainly relies, in support of this charge, is that rendered by David H. Judson, as follows:

Deposition of David H. Judson.

6356. Question. State your name, age, residence, and occupation.—Answer. Name, David H. Judson; age, fifty years; occupation, real estate and boat repairing; residence, Oswego City, East Seventh street, No. 151.

6403. Q. Did you know of the building of the shade-cloth factory in the city of Oswego last fall just prior to election? and, if so, state whether the same was a large or small building, or required the employment of a large or small number of men to erect the same; also state in the same connection of Thompson Kingsford erecting a large building on the corner of West First and Seneca streets last fall, and state whether there was a large or small number of men there employed prior to and at the time of election.—A. I know of the building of the shade-cloth factory, which was commenced during the summer season of 1878, and that a large number of men were employed thereon. I also know of the erection, or of the commencing to erect, the building known as the sash and blind factory by Thompson Kingsford, and that there was a large force of men employed on that building.

6404. Q. And was not the Hon. George Z. Sloan, who, at the time of the erecting of the shade-cloth factory and at the time of the election, was a candidate for member of assembly, the principal man as you understood in the erection of that factory, and a warm supporter of Joseph Mason for member of Congress in this district as against Mr. Duffy?—A. He was one of the principal men engaged in the construction of the shade-cloth factory; and as to the rest of the question, I should say yes.

6405. Q. And did he, Sloan, not receive a large majority for member of assembly in this city?—A. He did.

6406. Q. And have you not *understood* through political circles that Mr. Sloan was desirous of being represented by as large a majority as he could obtain, as he was obtaining prominence in the State of New York as a prominent candidate before a Republican convention hereafter to be held for governor?—A. Yes.

6407. Q. And was not the principal fight at last fall's election made to secure the election of Judge Mason and increase the majority for Sloan, as you understand it from Republican politicians?—A. Yes; upon the Republican side.

6412. Q. From your knowledge of the political position and desires of Mr. Sloan and Mr. Kingsford as leading Republicans to secure the election of Judge Mason, and the embarrassed circumstances of the large number of their employés upon the new buildings referred to heretofore, and from what you observed and knew of that class of voters, *do you not believe* that a great many of them, or a large majority of them, were induced by reason of their obtaining employment to vote for Mason and Sloan when the same was against their political predilections?

(Objected to as not proper in rebuttal and as immaterial to the issue, and as incompetent, and as calling for the belief of witness. Notaries differ, Coon holding it improper as rebuttal.)

A. I should say a large number of them did.
(See record, pp. 1005, 1006, and 1007.)

Cross-examination:

6599. Q. Can you name any voter, among all the employés engaged in the construction of that building, whom you can swear voted differently from what he would have voted in case he had not received employment there?—A. *I have not sufficient knowledge how any of the men employed on that building voted to swear positively as to how they voted.*

6600. Q. Can you name *a single employé whom* you have good reason to suppose voted

differently, by reason of that employment, from what he otherwise would have do —A. I have reason to *believe* that one William Kelly, I think is his name, voted dif ently by reason of his working upon that building, from what he would had he n been at work on the building.

6601. Q. Name another such employé.—A. I do not now call to mind the name of a other employé whom I have as good reason to believe voted differently last fall fr his conviction as in case of William Kelly.

6602. Q. Have you any *information* that leads you to *believe* that the vote of Willi Kelly was changed by any undue or improper influence? And, if you have, you m state what that information was.—A. I have knowledge and information to lead me believe that he voted in the manner he did from the fact of his laboring upon th building, *but the nature of that information I decline to give.*

6603. Q. Will you swear that his services were procured or were continued the under an agreement or understanding that he should vote for any particular candida or any particular ticket?—A. I will not so swear.

6604. Q. I ask for the source of your information which bears you out in the stat ment you have made in reference to William Kelly's voting?—A. Partly from himself.

6605. Q. And partly from what other source, if any?—A. My impression is that my other source of information was from John Radigan.

6606. Q. Do you now decline to state the nature of that information, or what it was? —A. I do.

6615. Q. You were present occasionally, and saw the work going on in Kingsford's new building last fall, did you not?—A. I was, occasionally.

6618. Q. Can you name an employé in that whole force whose vote you know to hav been changed by his employment there?—A. I do not know positively, at least posi tively enough to swear to it, how those employés voted, but can only judge fro appearances and *hearsay* as to how they voted.

6619. Q. Can you give the name of an employé on that force whom you have satis factory reasons for supposing voted otherwise than what he would by reason of suc employment?—A. I have; will name Mr. Cody.

6623. Q. Name another whose vote you think was changed by such employment.—A I think Mr. Brennan's was—Michael, I think; but am not sure about that. It was a elderly gentleman.

6626. Q. Are the three men, Kelly, Cody, and Brennan, men of good reputation f truth and veracity?

(Objected to as incompetent and immaterial, and nothing more than a cross-exam nation upon a cross-examination. Notaries differ; Coon for admission.)

A. I decline to answer under the notice.

6629. Q. Do you know what proportion of the employés upon Kingsford's new buil ing were Republicans and what Democrats and Greenbackers?—A. I do not.

6630. Q. Have you any knowledge of the politics of those men sufficient to enab you to express an intelligent opinion as to how many votes were changed, if any, b reason of their employment in the construction of those buildings?

(Objected to as being a repetition, the witness having already answered.)

A. I have no knowledge of how many votes were changed by reason of their emplo ment on those two buildings.

(See record, pp. 1025, 1226, and 1027.)

Very little, if any, importance can be attached to the evidence s rendered by Mr. Judson, as the facts upon which he bases his *beli* and expresses the *opinion* that a large number of the employés engage in the construction of said buildings were improperly influenced to vot for the contestee are very meager and unsatisfactory. He is only abl to name *three* men, out of hundreds engaged in the erection of the buil ings, who were, by reason of their employment, constrained to vote again their political convictions, and his entire information as to their so votin is purely *hearsay*, and must be excluded under the rule to which w have above referred, and in one instance he even refused to disclose th nature of the information acquired by him.

The contestant's purpose in introducing this evidence was to creat the impression that Kingsford's object in constructing the building erected by him was to furnish employment to a large number of labo ers, so as to enable him to control their votes at the approaching elec tion in favor of the contestee, and that he did in that manner influenc them to vote for the contestee against their will; but this charge ha been completely refuted by the evidence produced by the contestee.

The contestant failed to call a single one of the many employés engaged in the construction of the buildings to prove that he or any other employé was in the slightest manner interfered with in the full enjoyment of his rights as a voter, and has introduced no evidence to justify his assertion that the buildings were constructed for the purpose of giving temporary employment to idle laborers on the eve of the election "with a view to exercise a control over their votes as an incident to their employment," as charged by the contestant. While, on the other hand, the contestee has clearly and satisfactorily shown the urgent necessity that existed for the construction of the buildings at that time, and has, in like manner, established by the evidence of a large number of persons *who voted for the contestant*, and who were engaged in the construction of the buildings, that men irrespective of their political views were employed to perform the labor, and that no effort was made by Kingsford, or any other person, to control or influence in any manner their votes. (See evidence of Thomas Gill, Record, page 440; Patrick Kelly, pp. 443 and 444; Charles S. Newell, pp. 350, 351, and 352; James L. Quigg, pp. 434, 435, and 436; Eugene Purple, pp. 403 and 404; James Cosgriff, pp. 573 and 574; and James Ratigan, pp. 345, 346, and 347.)

In view of this evidence, we unhesitatingly say that the contestant has utterly failed to establish the truth of his charge.

IV.

The evidence introduced to sustain this charge, like that offered by the contestant in support of other charges, consists mainly of proof as to the existence of rumors that certain voters were bribed to vote for the contestee with money furnished for that purpose by the contestee. The contestant asserts that the contestee, a few days prior to the election, placed in the hands of an agent at Oswego $1,500, to be used in bribing voters, and to sustain this assertion he relies on the evidence of Philo Bundy, Samuel B. Burchard, and George W. Woods.

Bundy testifies that Burchard informed him the day after the election that contestee had brought to Oswego $1,500, on the Saturday previous to the election, to use where it would do the most good (Record, p. 36). He further says: "I did not believe it. I had no reason to. * * * I took a decided interest in the election of Mr. Duffy for Congress" (p. —).

Burchard testifies that he did *not* make any such statement to Bundy, and that he does not know of contestee bringing to Oswego any money to be used directly or indirectly to advance his election at any time during the campaign (Record, p. 79).

George W. Woods testifies that one Henry H. Lyman stated in his presence, a few days after the election, that the contestee had furnished $1,500 to corrupt the voters of Oswego, and that it had been placed in the hands of Elias Root for that purpose (Record, pp. 1058 and 1068).

Henry H. Lyman testifies that he did not make any such statement to Woods, or to any other person, and that he does not know anything as to contestee bringing money to Oswego and placing it in the hands of Root, or any other person, to aid in his election (Record, p. —).

Elias Root testifies that there was no money placed in his hands by the contestee, or any other person, for the purpose of advancing contestee's election, and that he does not know of money being placed in the hands of any person in Oswego for any such purpose (Record, p. —).

A direct conflict exists between these witnesses as to Burchard and Lyman, or either of them, making the statements imputed to them. It

is not necessary for us to settle this conflict, as it is immaterial, so fa as the merits of this case are involved, whether or not such statement were actually made by Burchard and Lyman, as they could in no manner, by such statements, affect the rights of the contestee, unless Burchard and Lyman were his agents, and authorized to speak for him, and there is no proof that any such agency ever existed. No competent evidence has been introduced showing or tending to show that the contestee furnished money for any such purpose. Bundy, who zealously supported the contestant, says that he does not believe that any such money was furnished by the contestee.

The only charges relating to the bribery of voters worthy of special notice are those relating to James Gilboy and ——— Hollingsworth.

Gilboy testifies that Walt. Cushman, then a student in the law office of the contestee, paid him, on the day of the election, fifty cents for voting for the contestee; that he went to the polls with Cushman, who gave him a paster with the contestee's name on, which was pasted on the regular Democratic ticket over the contestant's name, and that Cushman watched and saw him vote that ticket (Record, p. 906).

G. G. Waldron testifies that Gilboy promised him the day before the election that he would vote for the contestee, and told the witness to watch him when he came to vote and give him a Mason ticket, and he would vote it, and that at the election the next day the witness gave him a Mason ticket, and went with him to the polls and saw him deposit it, and that Cushman was not present (Record, p. 1139).

The evidence also shows that Gilboy, who is a hostler, is a man of bad habits, and has been in jail at different times, and that his character and reputation in the community where he resides is bad (Record, p. 1135). It is conceded by the contestant that Gilboy, while testifying as a witness, was intoxicated. In view of the character of this witness—his intoxicated condition while testifying, the many glaring contradictory and inconsistent statements in his evidence, his self-confessed infamy in selling his vote, and the evidence of Waldron to which we have alluded, we are not favorably impressed with the integrity or truthfulness of Gilboy, and must reject his evidence.

As to Hollingsworth, some doubt exists as to his qualifications as an elector, and it appears from the evidence that Hollingsworth, since the election, has stated to different persons that he received one dollar from Cushman for voting for the contestee, and that the money was paid to him after the election. Neither Cushman nor Hollingsworth were examined as witnesses. Conceding that Hollingsworth's statement is true, it does not affect the contestee, as the evidence fails to connect him in any manner with the transaction. A candidate cannot and ought not to be held responsible for all the imprudent and censurable acts of indiscreet friends, who, in the zealous advocacy of his election, resort to improper means in securing that result without his knowledge, and which he, if consulted, would condemn, unless the voters affected by such means are sufficient in number to change or render uncertain the result of the election.

V.

The evidence shows that fourteen students of Madison University, at the town of Hamilton, voted at this election (Record, p. 316). Their names are D. B. Grant, B. J. Mix, J. L. Kneeland, J. G. Simons, M. L. Rugg, P. H. Moore, W. C. Phillips, W. W. Staples, A. M. Tuttle, C. H. Powers, Ira Hall, James Benedict, George Baker, A. G. Cole, and Hutch-

inson; and it is safe to infer from the evidence that all of them except one voted for the contestee (Record, p. 422 to 425). The contestant insists that these persons were not legal voters, and in support of his position directs our attention to the following provision of the constitution of the State of New York:

§ 3, ARTICLE 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence *by reason of his presence or absence* while employed in the service of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or of the high seas, nor *while a student of any seminary of learning*, nor while kept in any almshouse or other asylum at public expense; nor while confined in any public prison.

Prior to the election in controversy a case was tried before Judge Wallace, of the United States district court, at Syracuse, N. Y., wherein a student at St. Bonaventure College, at Allegany, Cattaraugus County, New York, was indicted for illegal voting. Judge Wallace, in referring to the provisions of the constitution above cited, said:

Of course, the defendant was not a resident of both Orleans County and Cattaraugus County; he could reside in one county only for the purpose of exercising the right of suffrage. It appears indisputably that until September, 1875, he was a resident of Orleans County, and was a legal voter there. Now, the presumption of the law is that he continued to be a resident of that county, in the absence of evidence to the contrary, and the whole case may therefore be determined by ascertaining whether or not he acquired a new residence in Cattaraugus County—whether the evidence adduced overcomes the legal presumption to which I have referred. And it is at this point that the bearing and effect of the constitutional provision found in section three of article two of the constitution of this State becomes important. The language there employed is: "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student of any seminary of learning." By force of this language it is clear that defendant neither lost his residence in Orleans County nor gained a residence in Cattaraugus County merely because of his appearance in the latter place as a student at the college. Now, I do not pretend to instruct you that this constitutional provision precludes a student from acquiring a residence at the place where he is attending college, but the fact must be established by evidence other than that which is afforded by this sojourn in the place as a college student. A change of residence may be effected by a change of location with the intent to make that location a new home, as distinct from an intent to return when some temporary purpose is accomplished. But a change of residence is not effected by intention alone, nor by change of location alone. Both must occur. And the intent must be evinced by consistent acts which denote an abandonment of the former residence, and the selection of a new home. You may find here that defendant never intended to return to Orleans County as his home, from his declarations and his conduct, but you must also find, before you can decide that he can acquire a new residence, that he intended to make Cattaraugus County his future home, and evinced that intent by corroborative acts. It therefore follows, if the evidence does not disclose any circumstances which distinguish his case from that of the ordinary one of a college student, intent upon prosecuting his studies, but who has left the paternal roof to mark out his own future for himself, it fails to meet the requirements of the law for the acquisition of a new residence, and the main question in the case will turn upon your conclusion upon the subordinate one. In conclusion, it is appropriate to remind you that, although the defendant may have conscientiously believed he had acquired a residence in Cattaraugus County, and was exercising a lawful right in voting there, his violation of the law is not thereby purged of the criminal intent which is the essential element of every crime. Every citizen is presumed and required to know the law. (See Record, p. —.)

The evidence in this case shows that it has been customary for many years for the committees of the different political parties in Madison County to secure the attendance of these students of Madison University at the polls as voters (see Record, p. 714). Some years as high as 75 students or more of the university voted at the village of Hamilton (Record, p. 710), while the number who voted at the election in dispute was 14. One of the witnesses, Edward D. Van Slyck, testifies that the reduction in number at the election in controversy was due to Judge Wallace's

opinion, above set forth, "which was taken as the guide and became the decisive ground upon which they claimed their right to vote," and that the contestee advised the students "that no one should vote unless he was perfectly satisfied that he was a legal voter, and advised them to keep strictly within Wallace's opinion." (See Record, p. 710.)

Thomas Beal, one of the contestant's witnesses, was examined as to the residence and qualifications as electors of those students who voted at the election, and by his evidence it appears that 6 of the 14 that voted are married men and have resided at Hamilton for many years, and the witness is unable to state that any one of these 14 students had a residence elsewhere than at that village. (See Record, pp. 319 to 321.) The students who voted were allowed to do so after being first sworn as to their qualifications as electors. (Record, p. 316.) Although the burden of proving that these students were not legal voters devolved on the contestant, he has introduced no proof establishing or tending to establish that fact. He relies alone on the fact that they were then students at the university, which of itself creates no presumption that they were not legal voters of the town of Hamilton. The record shows that subsequent to the election several of the students who so voted were arrested on a charge of illegal voting, and their examination on that charge occurred before C. M. Dennison, United States commissioner, and resulted in their discharge. The following is the opinion rendered in the case by Commissioner Dennison:

United States of America against Pitt H. Moore; same against Brenett J. Mix; same against Levwick L. Kneeland, by C. M. Dennison, commissioner.

In these cases the defendants are charged with illegal voting at the last general election for Representative in Congress, and the cases are all substantially alike and may all be decided together. The evidence in these cases is undisputed and in no way conflicting, and shows that all of the defendants are students of some one of the departments of Madison University; that each had entirely and absolutely severed his connection with his former home, and supported himself by his own earnings, together with what aid he received from the beneficiary funds of the institution, and had gone to the village of Hamilton with the intention of making that his only home and residence, at least while in attendance at the university, and had so remained there the time required by law to become a voter. In my opinion there could be no question but that each of these young men would have been a legal voter at Hamilton had he gone there in the manner in which he did and performed the same acts which he did, were it not for the fact that they came within the classes of persons enumerated in article 2, section 3, of the constitution of this State, and that the determination of these cases turns wholly upon the meaning of that section. It is claimed by the prosecution that this section of the constitution is prohibitory, and that no person can possibly gain a residence while a student of any seminary of learning. I cannot concur in this doctrine. This section of the amended constitution is the same as in the constitution of 1840, and, substantially, in my opinion, a simple enunciation of the common law, and meant rather as a protection than as a prohibition, and is not intended to prevent any class of persons from changing their place of residence and gaining a new voting residence, but rather to protect persons who shall leave their actual permanent residence with an intention of going temporarily in some of the occupations or callings in said section enumerated, and at the completion of said purpose to return to their actual residence, and being thereby disfranchised during such absence. In my opinion this section of the constitution is not intended to disfranchise any citizen of the State of New York, but rather to protect every citizen of the State in the full exercise of the right of elective franchise. It is further claimed by the prosecution that these cases are parallel and at all fours with the case of "The United States against McCarthy," decided by Judge Wallace January, 1878. The defendants in these cases had the opinion of Judge Wallace in that case and examined the same carefully and took legal advice thereon before offering to vote, and upon such examination and advice concluded that their cases did not come within that decision, and that there was nothing contained therein which would prevent their voting, and they all voted after challenge and took the oaths required by law. These defendants are all candidates for the ministry, and, in my judgment, acted conscientiously and with great care, and, as I construe the law, were entirely correct in their conclusion that they were legal

voters of the place where they voted. It is ordered that each of the defendants be, and they are, discharged. (See Record, pp. 1170 and 1171.)

The evidence is wholly insufficient to authorize us to determine that the students who so voted were illegal voters.

In conclusion, we are, for the reasons stated, fully satisfied that the contestant is not entitled to the seat in controversy, and therefore recommend the passage of the following resolutions:

Resolved, That Sebastion Duffy is not entitled to a seat in the Forty-sixth Congress as a Representative from the twenty-fourth Congressional district of New York.

Resolved, That Joseph Mason is entitled to a seat in the Forty-sixth Congress as a Representative from the twenty-fourth Congressional district of New York.

WALPOLE G. COLERICK.
WM. M. SPRINGER.
SAM'L L. SAWYER.
J. B. WEAVER.
W. A. FIELD.
W. H. CALKINS.
J. H. CAMP.
J. WARREN KEIFER.
E. OVERTON, JR.
VAN H. MANNING.
EMORY SPEER.
R. F. ARMFIELD.

We concur in the conclusion of the foregoing report and in the resolutions recommended.

E. C. PHISTER.
F. E. BELTZHOOVER.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1569.

COLOR-BLINDNESS IN THE NAVY.

MAY 24, 1880.—Recommitted to the Committee on Naval Affairs and ordered to be printed.

Mr. B. W. HARRIS, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany H. Res. 308.]

The Committee on Naval Affairs, to which were referred the petition of B. Joy Jeffries and others, and the several petitions in aid thereof, has considered the subject, and submits the following report:

The petitioners are among the best and most scientific men in the country. They take a very deep interest in the subject, and we think they are fully justified in presenting it to Congress and urging action upon it. Its importance cannot, in the opinion of the committee, be overestimated. Vast numbers of human lives and a commerce of immense value depend for their safety upon the perfect eyesight of the men in charge of vessels and railroad trains. Persons who cannot distinguish perfectly the colors of lights, flags, signals, and buoys, or are liable to mistake them, or who from want of acuteness of vision cannot perfectly observe the forms of objects at ordinary distances, ought not to be placed in positions of responsibility on ships at sea. A perfect watch at sea requires perfect eyesight. The subject is comparatively new, but not the less important; and perhaps for the reason that it is new and important, it should have the more careful attention.

Throughout the civilized world there has been for the last few years great attention drawn to defective vision and color-blindness among sea-going men, as well as railroad employés.

Reliable statistics from the best medical experts in Europe and America have proved the existence of color-blindness in about four per cent. of men, while in women this peculiar defect is very rare. Color-blindness exists as *red* or *green* blindness, one involving the other. Violet or blue-yellow blindness also exists, though more rarely.

Red and green being the colors which all maritime nations have agreed to show on the port and starboard sides of vessels at night, and red buoys, red storm-signals, and red light-house lights being used, of necessity requires on the part of those navigating vessels a normal or perfect perception of colors, and this of course in addition to good eyesight for form, or normal *visual power*.

In proportion as the person is color-blind, in that proportion will the red and green lights or signals be undistinguishable from each other, and the person be uncertain which he sees. This defect exists in all degrees of severity, the lightest forms of it often being the most dangerous, since, if the person who *can see a strong* red light at a certain distance,

while the paler green light cannot be distinguished from the mast-he light, he may be deceived as to his surroundings and fall into fatal rors which he cannot account for or excuse himself for, but which m be wholly attributable to color-blindness, of the existence of which he himself wholly unconscious. Just such a case has been reported.

Color-blindness is very hereditary. When congenital it is incural and cannot be palliated by any practical methods. It is also said to produced by injury, disease, and poisoning by alcohol and tobacco. A these conditions are now recognized in regulations for its control on la and sea.

Till Professor Holmgren, of Sweden, introduced his method of exa ination, medical experts had no accurate and quickly applied means testing for color-blindness. This is largely the reason why it and al defective visual power have been overlooked in the past.

Now, that attention has been so generally called to these sources danger on land and sea, European governments and railroad corpo tions have enacted laws and adopted rules of control. In this coun only one State (Connecticut) has passed the requisite laws. Some r road corporations have acted, but, as was also first done in Europe, in uncertain manner, from lack of recognizing the necessity of medical perts to carry out the examination in a thorough and systematic man

The maritime nations of Europe have introduced these tests into th navies, and some of them into the merchant marine. Our governm has recognized the importance of the subject, as shown by the act of the three departments, Army, Navy, and Marine Hospital Serv In the last, it is made compulsory with pilots but not with seamen.

The supervising surgeon-general of this department has well show his annual report for 1879 the great value of enforced physical exam tion of seamen, a part of which is testing the color sense and visual pow

To the medical officers alone of these several departments is intrus this important duty. They are provided with the "Manual" lately p lished by B. Joy Jeffries, M. D., the head petitioner, who has given subject great attention and careful study, and the material necess to carry out the test of Professor Holmgren therein recommend There are of course no returns from these departments on these poi regulations having been so recently made. When, as in Europ navies, the tests have been carried out, about the same proportion seamen are found color-blind as among railroad employés, viz, from 2 5 per cent.

This dangerous defect in so large a number of persons cannot explain the cause of many marine disasters otherwise unexplainable.

A classification in Europe of the reports of 2,408 accidents, betw 1859 and 1866, showed—

Want of skill, carelessness of the ship *personnel*, or accidents which it was impossible to prevent or avoid	1,
Error of pilot or captain	
Want of observation or proper interpretation of the rules of the road	
Undetermined causes	
	2,

Under the last three heads are 846 accidents which might have b due to color-blindness or defective vision.

While maritime powers have sought to eliminate the danger fr color-blindness by requiring examinations, all have not directed s methods to be used as would render the elimination certain. Moreo all are not agreed as to the requisite amount of color perception ne

sary to render a lookout perfectly safe for the vessel the lookout is on, as well as for the one approaching. There is also no definite standard of visual power acknowledged as necessary in the navigation of vessels. Mutual intercourse and the comparison of the results of different tests would enable the maritime nations taking part in it to avail themselves of each other's experience, and readily lead to the adoption of the best methods of examinations and the requisite standard of requirements.

Dr. Jeffries, in his "Manual" above-mentioned, says: "The test for color-blindness now being so simple as to be readily carried out by the surgeons attached to vessels, especially naval medical officers, there can be no great difficulty in having an international commission meet and frame the laws or regulations which shall govern all the navies and merchant marines of the great maritime nations at least. It would then be as readily recognized that every officer and man must be able perfectly to distinguish the red and green lights as to know where they belong and what they mean." This author's experience is based on the examination of over 30,000 individuals, and corresponds with that of all the scientifie European observers. The final conclusion in his Manual is: "An international commission should be called to establish rules for the control of color-blindness on the sea, and the carrying out the same examinations amongst pilots, masters, and crews of steamers and sailing vessels in the navies and the merchant marine."

It will avail but little if, of two vessels of different nations meeting, but one of them has no color-blindness on the lookout. An international commission would, from the weight of its authority, force examinations even among those nations not participating in it, as well as settle standards, methods, and requirements.

The committee recommends the adoption of the joint resolution herewith reported as a first step towards the accomplishment of the object in view.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1570.

OCEAN MAIL SERVICE BETWEEN UNITED STATES AND SOUTH AMERICAN PORTS.

MAY 24, 1880.—Recommitted to the Committee on the Post-Office and Post-Roads and ordered to be printed.

Mr. SHELLEY, from the Committee on the Post-Office and Post-Roads, submitted the following

REPORT:

[To accompany bill H. R. 6313.]

Your committee having had under consideration sundry bills of the House, relating to the establishment of ocean mail steamers, beg leave to submit the following report:

The bills under consideration provide in various forms for the establishment of postal mail steamship lines between the United States and foreign countries, and authorize the Postmaster-General to contract with the lowest responsible bidder for carrying ocean mails of the United States on vessels built in American ship-yards, and owned and officered by American citizens.

The question of ocean mail communication with foreign countries and the carrying trade of the United States are so intimately connected that it is almost impossible to consider them separately.

Mail facilities are necessary to promote commerce between nations. It is impossible for one nation to know the resources, productions, capabilities, and necessities of another without they are united by mail communication.

Business connections cannot be formed between the merchants and producers of two nations unless there be certain and reliable mail connections between them.

The swift postal steamer is always the forerunner of the slower, heavier, and more commodious freight vessels, which are necessary to meet the demands of increased commerce.

Commerce between nations must have a beginning, and unless we use the necessary means to develop and make known the extent and variety of the agricultural and manufactured products of our people, we cannot expect to reach that degree of commercial success to which we are entitled.

There is no nation of the earth whose foreign commerce should be greater than that of the United States. We have fifteen thousand miles of sea-coast; we have the best harbors in the world; our extensive railroad system and inland navigation afford abundant means of reaching the coast with the products of the country. We produce an immense excess of all the commodities of life; our soil is rich enough to feed the people of the entire world; our mountains are filled with every valuable metal; our forests are *full of the finest* timber; our agriculturists are

the most enterprising and most successful; our mechanics and artisans are the most efficient and ingenious; notwithstanding all of which our foreign commerce is restricted in the main to one or two nations of Europe, one or two ports in Asia, and to a few ports in South America, Central America, Mexico, and the West India Islands.

We have lost our carrying trade. In 1879 our total foreign commerce was valued at about $1,550,000,000, and of this amount $1,133,000,000 was carried in foreign ships, and $417,000,000 in American ships, the excess of foreign carriage being $716,000,000.

In 1877 our total commerce was valued at $1,173,000,000, of which foreign vessels carried $858,000,000, and American $315,000,000. The largest part of our mail for Europe is carried in foreign bottoms. We have direct mail communication with one or two Asiatic Nations, carried also in foreign bottoms. Our communication with South America, until recently, was solely through the medium of English vessels, and up to two years ago, and until an American line, by the energy of private enterprise, was put on the ocean between Rio de Janeiro and the United States, a letter from the United States to South America was obliged to be carried to Liverpool and thence remailed to Rio.

We pay annually to foreign ships in freight and passage money $75,000,000; we pay in mail contracts to foreign ships $200,000 a year, and to our own ships we pay about $20,000 annually in ocean postage. While English ships, with English mails, English goods, and containing English newspapers full of English advertisements, visit every port in the world, setting forth the advantages of English trade and commerce, little is known of American enterprise and productions and the advantages of American commerce even by the people of those nations with whom we are contiguous. The result is that England, France, and Germany control almost the entire commerce of Mexico, Central and South America, and the West Indies.

It will be interesting here to notice the extent of the commerce of those foreign nations and peoples and the small proportion of it which the United States control, especially of countries which are much nearer to the coasts of the United States than is England, France, or Germany. Australia, for instance, annually imports to the amount of $240,000,000, of which the United States sells $7,171,815.

India imports to the extent of $225,000,000, of which the United States sells her $1,432,446.

Brazil imports to the extent of $100,000,000, of which the United States sells her $8,194,370. South America, Central America, and Mexico annually import to the amount of $500,000,000, of which the United States sells them $112,350,000. Upon examination it will be found that the principal imports of the countries above mentioned are produced in the United States in excess of our own wants. It will be seen that these nations import largely of machinery of all kinds, also munitions of war, flour, pork, lard, wheat, agricultural implements, and articles for household use, as well as immense quantities of manufactured cotton goods, and, indeed, upon the list of their imports there is scarcely an article which is not made or raised in the United States. It is an indisputable fact that a large proportion of the British commerce with these nations is carried on in American goods and products. The English merchants, with a monopoly of our carrying trade, actually buy articles of American manufacture and sell them to people who dwell almost within sight of our coasts, making easily thereby a large profit. It is a well-known fact that cotton goods, bought by the case at American factories, are taken to Manchester and stamped with the

English brand and then reshipped for sale to the peoples of South and Central America, China, India, and Japan at a very large profit.

In the statistics of last year there is a list of nations and peoples who held the balance of trade against the United States. Among the countries enumerated are Cuba, Brazil, China, British East India, Japan, Spanish possessions, exclusive of Spanish West Indies, Venezuela, Porto Rico, Argentine Republic, French West Indies, Central American States, Hawaiian Islands, Uruguay, United States of Colombia, Peru, Turkey in Asia, Greece, and one or two other countries with which we have small commerce, which shows a balance of trade against the United States of $136,095,494; and yet there is not one of the countries mentioned which could not be furnished with all it requires from the fields and factories of the United States, and against which we should not show a balance of trade if we had direct postal communication with them and the necessary carriage for our commerce.

The balance of trade last year in favor of the United States as against all nations was $265,859,618, while it should have been $538,050,606. The United States is nearer the countries mentioned above by from 500 to 3,000 miles than England, France, or Germany, and yet the three latter nations control eight-tenths of their immense commerce.

New York is distant from Rio 5,200 miles, and New Orleans 4,850 miles, while Liverpool is 6,000 miles from that great mart. Central America and Mexico are nearer us by 2,000 to 3,000 miles than is England. Japan and China are distant from the United States 5,000 to 7,000 miles, and from 10,000 to 12,000 from England, yet England controls almost the entire commerce of these nations.

Of the imports of the Argentine Republic in 1878, we find $240,000 of arms, of which the United States sold her $7,869. She purchased of boots and shoes nearly $800,000, of which the United States sold her $2,116. She imported $54,000 in carriages, of which the United States sold her $2,460. She imported largely of locomotives, of which the United States sold *not one*. England sold her and continues to sell her all the locomotives she uses, while England herself imports American locomotives. Of machinery of various kinds the United States sold but $127,831, while England sold $1,320,310, and France sold $266,704, or double the sales of the United States, and yet the United States manufacture the best arms, boots and shoes, carriages and harness, locomotives and machinery, in the world.

The truth is that foreigners do our carrying trade, foreigners transport our mails, but with no desire to disseminate a knowledge of the benefit of American trade. Foreigners advocate no American enterprise, but suppress, as far as they can, the advantage of traffic with the United States, and even while doing our carrying trade and transporting our mails they take good care to perform their services in such a way as will be of most benefit to themselves and of the least advantage to the United States.

In the last fifteen years we have paid to foreign ships the enormous sum of one billion of dollars in freight and passage money. In 1851 we did three-fourths of our own carrying trade. Now we do but one-fourth of it, and yet our seamen and officers are equal to any in the world.

The question then is, how can we regain our lost carrying trade and reassert American commercial supremacy? It is a melancholy fact that one of the results of our unhappy civil war was to place our whole carrying trade in the hands of England.

So long as the carrying trade was confined to wooden ships, we outstripped her both in ship-*building and in the* carriage of commerce; then

she took a new departure and began constructing iron steamships, an before the war had closed the revolution from the wooden and sail t the iron and steam vessel was complete.

We cannot compete with England in ship-building, by reason of th great difference in the price of labor in American and British ship-yards At least 90 per cent. of the cost of a ship is labor. Material is as cheap with us, if not cheaper, and better than in England, but the American laborer cannot afford to work as cheap as the English laborer. In the overcrowded population of the Old World labor is so plentiful that the shipmaster can dictate his own terms, and the English laborer can live in a style to which the American laborer will not submit.

In America the population is not at all overcrowded, and labor is scarcer and dearer, and the American mechanic cannot and will not work as cheap as they are required to do in other countries, and American statesmanship would not reduce the American to the wretched condition of the English laborer even if it could be done.

Again, capital is much cheaper in England than in the United States Under English laws every advantage is given to the ship-builder and th ship, while under American laws the discrimination seems to be agains the ship. The English ship engaged in foreign trade draws its supplie out of bond, while the American ship pays the full duty to the goverr ment. By State laws the American ship is taxed as any other pro erty, while under the British law only a moderate tax is imposed upo the net earnings of ship companies.

The British Government contracts with its lines of steamships an pays them large subsidies for carrying its mails, while the United State compels its ships to carry its mails, and will not allow a ship its clea ance papers until she has the United States mails on board, and th allows her only the ocean postage of three cents on a letter, which is dead loss to the ship.

The stage-wagons carrying the inland mails receive an average of $ per mile of route per annum. The steamers on the rivers and alo the coasts receive an average of $43.50 per mile per annum.

The railroads receive an average of $131 per mile per annum, wh the more important roads receive $538, $897, $922, $979, $1,155 per m of road per annum; and, on the vast majority of these, the postage c lected would not pay the cost. On only a few hundred of the 9,9 routes would the carrier consent to do the work for the postage, yet t merchant-vessels are compelled to carry the mail for the ocean postag which in very few cases will amount to as much as $1 per mile pe annum. A company sending a magnificent and costly vessel over stormy ocean for 3,000 or 4,000 miles receives less for carrying the ma than a stage-coach running on an unimportant inland route.

As long as this state of things exists we cannot hope to increase ou foreign commerce. It will not do to say that the trouble is in the nav gation laws. The policy of buying ships abroad would soon transfer t England the ship-building interests of this country. If a free ship la were passed our domestic ship-yards would be immediately closed and ou army of skilled workmen and ship-carpenters would disperse. Englan would then have absolute control and monopoly of our market, and woul charge us for ships exactly what she pleased, and we would be oblige to pay her price or do without them. Then, in case of war with England we would be entirely at her mercy, for we would have no ship-yards, n army of skilled labor with which to build a navy. Our condition in tha event would place us at great disadvantage.

The stanchest advocate of free trade would never consent that thi

free-ship policy be carried out to the utter destruction of one great arm of national defense.

Apart from this, if by any policy we can stimulate the building of American ships upon the principle that the manufacture of an article always cheapens in proportion to the increase of the quantity made, it will not be a great while until, by the superior quality and abundance of our material, the superiority of our workmanship, and by our employment of labor-saving machinery in the manufacture of all articles, we will be enabled to overcome the great difference in the price between American and English labor, and build ships as cheaply as the English.

In his celebrated report on commerce Mr. Jefferson wisely said: "Our navigation involves still higher considerations; as a branch of industry it is valuable, but as a resource of defense it is essential. The position and circumstances of the United States leave them nothing to fear from their land-board, and nothing to desire beyond their present rights. But on the sea-board they are open to injury, and they have then, too, a commerce which must be protected. This can only be done by possessing a respectable body of citizen seamen and artists and establishments in readiness for ship-building. If particular nations grasp at undue shares (of our commerce), and more especially if they seize on the means of the United States to convert them into aliment for their own strength and withdraw them entirely from the support of those to whom they belong, defensive and protecting measures become necessary on the part of the nation whose marine resources are thus invaded, or it will be disarmed of its defense, its productions will be at the mercy of the nation which has possessed itself exclusively of the means of carrying them, and its politics may be influenced by those who command its commerce. *The carriage of our own commodities, if once established in another channel, cannot be resumed in the moment we desire.*

"*If we lose the seamen and artists whom it now employs, we lose the present means of marine defense, and time will be requisite to raise up others, when disgrace or losses shall bring home to our feelings the evils of having abandoned them.*"

But the policy of buying ships abroad, apart from the aspect of national defense, is not beneficial to the nation at large. An individual, if the present laws were repealed, could buy an English ship fifteen per cent. cheaper as between the price of the American and English ship. But the price of the American-built ship has been paid in the United States, and ninety per cent. has gone into the pockets of American labor and adds to the general wealth. By the policy of building, therefore, the ships and the cost of building remain in this country. By the policy of buying ships abroad, a single individual is benefited fifteen per cent. on the cost of the ship, but the whole body of the people is loser by just the amount drawn from this country and paid into the pockets of British ship-builders.

But suppose that the navigation laws are repealed, and the American is permitted to buy ships in England, even then, without a just system of postal contract, the American ship would be unable to maintain competition with the English ship; for, in the first place, British capital is much cheaper than American capital. In the next place, the English ship is run and operated at less expense than the American. In the third place, the British now have a monopoly of the carrying trade, and are able by their combinations to put down freights and to discriminate against American ships so as to maintain their own supremacy.

It requires time to change the channels of commerce. The American ship and merchant cannot *change the channels* of trade which years of

undisputed occupancy and monopoly have worn deep. American goods must be advertised; the advantages and superiority of American products and manufactures must be demonstrated; the cheapness and excellence of our wares must be shown; confidence in the stability of American lines of steamships must be established; monetary relationship and banking facilities must be acquired and established.

All this requires time. Unless, therefore, the Government of the United States would strongly sustain with liberal postal contracts its lines of steamships during the time required for achieving all these results, the United States, with all her advantages, must be content to occupy her position of commercial dependence and inferiority. And this would be the case even though ship-owners were permitted to go abroad and buy ships in the cheapest markets.

But your committee are of the opinion that by the policy of contracting liberally with American-built ships, that not only in the course of ten years will we be enabled to successfully compete with the English in ship-building, but by reason of the cheapness of our products and of the superiority of our manufactures as well as by our proximity to the South and Central American countries, we will be enabled to establish the American marine in those waters upon a firm basis and will monopolize the rich and growing commerce of those wealthy lands.

Your committee are unable to see why there should be hesitancy on the part of the United States to pay to the ships engaged in foreign trade just and liberal compensation for the carriage of the mails. The post-office appropriation bill which has just passed the House, provides for the payment of something like ten millions of dollars to the railroads of the country, eight hundred and fifty thousand dollars to the steamboats on our rivers, and five millions for the service by stage and on horses. Here then we find the sum of nearly sixteen millions of dollars paid for the transportation of the inland mails. The contracting for mail service with a steamship line is no more a subsidy than the payment of the price of a mail contract to a railroad company, or to the owner of a line of stages; and yet the railroads of the country produce no revenue for the country, while the duties on the articles of foreign merchandise brought home on our ships constitute our chief source of revenue. Mail subsidies are paid by England, France, Germany, Spain, Portugal, Italy, and even Japan.

The bill reported by your committee will place upon the ocean at no distant date a fine fleet of not less than sixty first-class iron ships of American build, worth at least eighteen millions of dollars. It will place in training not less than ten thousand American sailors, who might properly be termed the "militia of the sea," and who, in case of war would be found ready to man the guns of our war vessels. It would create an army of skilled laborers in all of our ship-yards, which, in case of an emergency, could quickly create a navy. It will save us within the first two years of its operation, at least half of the seventy millions that we annually pay to foreign ship-owners, in the shape of freight and passage money. It will place us in direct and friendly communication with the great and growing states and peoples of the South American and Caribbean Seas, as well as Australia, India, China, and Japan. It will open up new markets for American commerce that, in the course of a few years, will greedily consume all the surplus produce of American fields and factories.

It will stimulate by the very demand of these markets, in every field and on every farm, in every factory, at every forge and furnace of the United States, American labor in every department, and all this at a

cost of $1,500,000 per annum, or $15,000,000 for the entire ten years of the contracts provided for; and this is just one-tenth of what we appropriate for inland postal communication each year; or the aggregate of $15,000,000 for ten years of contract is just equal to one years' appropriation for inland postal service.

Your committee are profoundly impressed with the absolute necessity of the adoption of this measure, and they therefore report the accompanying bill as a substitute for the several bills on this subject referred to your committee, and most earnestly recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1571.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

MAY 24, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. FERNANDO WOOD, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany H. Res. 311.]

The Committee on Ways and Means, to whom was referred H. Res. 288, "*to repeal so much of the act approved June* 20, 1874, *as authorized the appointment of a commission to take charge of the Freedman's Savings and Trust Company, and to abolish said commission,*" *have had the same under consideration, and report:*

The object of this resolution, having in view simply the saving from ny further waste the assets and property of this ill-fated institution, as commended itself, in the unanimous judgment of your committee, as eserving of favorable consideration. It is not necessary for your committee, in furnishing reasons for this conclusion, to do more than to lvert to so much of the report of the select committee appointed by the enate to investigate the Freedman's Savings and Trust Company, ported to the Senate April 2, 1880, as relates to the present management of this corporation by the commissioners, showing the immense and unnecessary expense which has attended the administration of its affairs, hich has entailed severe losses, amounting in many instances to the solute ruin of many of its deluded depositors. The following quotation om this report is commended to the careful attention of Congress:

PRESENT MANAGEMENT.

The amendatory act of June 20, 1874, provided for closing up the entire business of bank, when such action should be deemed advisable by the trustees, through the pointment of three commissioners, vesting in said commissioners the powers exered by the trustees and such additional powers as might be necessary for the purses of their appointment.

On the 29th of June, 1874, the bank by vote of the trustees was closed, and three mmissioners—Messrs. Creswell, Purvis, and Leipold—were appointed to close up the siness of the bank, and they qualified and entered upon their duties July 11, ereafter.

The statements of the commissioners and the tabulated reports and schedules subitted by them to the committee are furnished herewith, and give a very full idea of ne management and condition of the bank since they entered upon its control.

The statements and reports show the total assets and liabilities of the bank when hey assumed control, the amount of dividends to May, 1879, the annual and aggregate xpenses of administration, including taxes, salaries of commissioners and of employés, and other incidental items of expense, and the present assets and liabilities.

It will be seen from these statements that 30 per cent. of dividends have been declared, and that there is reasonable ground to expect a further and final dividend of at least 20 per *cent., leaving as a loss to the* depositors something over $1,500,000.

It will be seen also that the aggregate cost of administration for the six years during which the commissioners have had charge of the institution has been $335,994.77.

Of this aggregate fifty odd thousand dollars have been paid as salaries to the commissioners, and more than $70,000 to agents and other employés, and more than $31,000 as attorneys' fees.

It was deemed desirable by those who procured the passage of the amendatory act of 1874 that the duties of the institution should be devolved upon three commissioners the friends of the measure deeming it important that a responsible representative of the colored race should be on the commission, that one of the commissioners should be learned in the law, and that one of them should be practically familiar with details and methods of banking; and these considerations not only operated to produce the legislation in question, but were also recognized in the appointment of the gentlemen who have administered the affairs of the bank since July 11, 1874. Whatever motive prompted this feature of the law, the history of the affairs of the company for the period referred to show that the provision was an improvident one, and imposed upon the bank a needlessly large and expensive management.

If this expensive machinery were ever needed or expedient it is no longer so, and we recommend the passage of a bill placing the affairs of the bank in the hands of a single person, with such powers conferred upon him and such restrictions as will lead to the earliest practicable settlement of the business of the institution.

After the lengthy and exhaustive consideration which has been given to this subject by the Senate committee, and concurring as your committee do in their conclusions, they are forcibly impressed with the importance and necessity of prompt and immediate action by Congress in justice to a large class of citizens who have suffered heavily in the past from this badly conceived and ill-advised management of the remains of this company, and who are numerously appealing to Congress for relief. Your committee have agreed upon a substitute for the joint resolution referred to them, and they report it with the recommendation that it do pass.

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H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1572.

PUBLIC BUILDING AT COLUMBUS, OHIO.

Y 25, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

r. MCKENZIE, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6322.]

he Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 4267) to authorize the construction of a fire-proof building at Columbus, Ohio, have considered the same, and beg leave to report:

The United States district and circuit courts for the eastern subdi-sion of the southern judicial district of Ohio, composed of twenty-nine it of the eighty-eight counties of the State of Ohio, are held at Colum-is. That subdivision embraces nearly one-third of the territory of the hole State.

At the last general election there were cast therein 195,560 votes, and is believed that the census of the present year will show a population one million.

The statistics of 1879 for Ohio have not yet been published, but those 1878 show that the twenty counties paid of State and local taxes the n of $5,723,520.69; that there were rendered in the State courts rein during the year 9,851 money judgments, covering $4,827,525. e taxable property on the grand duplicate for taxation was $411,-,424. With the rapid growth and prosperity of that section all of l amounts have been largely increased during the past two years. e city of Columbus contains 50,000 inhabitants, and is the capital of State. The rented rooms in which the United States courts are d, though the best that can be procured, are insufficient and unsuited he transaction of the business.

INTERNAL REVENUE.

There was collected at Columbus, Ohio, from the seventh revenue dis-t, composed of only thirteen counties, during the periods hereinafter ned, the following sums:

the year ending June 30, 1869	$784,994 11
the year ending June 30, 1870	1,018,315 24
the year ending June 30, 1871	718,371 24
the year ending June 30, 1872	702,177 06
the year ending June 30, 1873	495,343 53
the year ending June 30, 1874	744,598 17
the year ending June 30, 1875	635,175 25
the year ending June 30, 1876	800,788 01
the year ending June 30, 1877	322,780 01
the year ending June 30, 1878	288,253 45
the year ending June 30, 1879	296,834 34
Total	6,807,630 41

Estimated by the collector for the year ending June 30, 1880, $500,0
Making a total of internal revenue for twelve years, $7,307,630.41, pa
by thirteen counties.

PENSION AGENCY.

The United States pension agency for the entire State of Ohio is
Columbus, its capital. There are at that agency already over 23,(
names on the pension roll. The records and files in the office are v
numerous, and their value to the government as well as the individu
is very great. They should be kept in fire-proof vaults, free from (
ualties, theft, or designed destruction.

The present incumbent has paid pensions as follows:

In the year 1877 (10 months)	$1,713,27(
In the year 1878	2,543,39
In the year 1879	5,233,11
In the year 1880 (3 months, to April 1)	851,37
Total	10,341,14

Average per year, $3,353,889.60; average per month, $379,490.

POST-OFFICE.

The postal revenue collected at Columbus, Ohio, during the last
years, is as follows:

	Net revenue.	Gross reve
1869	$23,319 66	$40,16
1870	26,702 89	43,69
1871	31,623 61	47,98
1872	35,387 44	52,30
1873	35,330 54	52,41(
1874	35,637 46	53,96
1875	45,926 39	62,33
1876	49,669 26	66,54
1877	51,941 30	68,06
1878	57,897 01	73,95
1879	62,904 25	80,78
Total	455,773 81	642,21

The average number of pieces mailed per day during the last y
was—

Postal cards and letters	8,
Newspapers and periodicals	9,
Transient printed matter	3,
Packages of merchandise	
Total average per day	21,

The number of pieces received about equal those mailed, which wo
show a daily average of 42,198 pieces.

Stamps and envelopes sold in—

1877	$66,9
1878	72,71
1879	79,72
Total	219,42

Money-orders issued and redeemed:

1877	$229,29
1878	259,66
1879	313,76
Total	802,73

There are eleven railroads centering at Columbus, on which daily mails are transported. Thirty-four persons are employed in the post-office in the transaction of this business. Two rooms are occupied, one 19 by 29 feet, where all mails are received, made up, and dispatched; the other, 29 by 80 feet, in which all other business is transacted.

This is about half the necessary room for the comfortable and proper transaction of the business, yet no better accommodations can be had in a suitable location.

The amounts of rents now being paid by the government at Columbus, Ohio, are as follows:

For post-office	$800 00
Revenue-office	480 00
Court-room	1,200 00
Pension-office	646 00
Total	3,126 00

The post-office, pension-office, and court room are inadequate to the safe and proper transaction of the public business, and there are no suitable rooms to be leased for these purposes.

The honorable Secretary of the Treasury, in his report to your committee, gave it as his opinion that it was advisable to erect a government building at Columbus, Ohio. He uses the following language:

> The foregoing statement of postal and internal revenue collections for the past ten years, in connection with the statement of rent paid at Columbus, as well as the fact that it is the capital of the State, would seem to furnish sufficient reason for the erection of a public building in that city.

Your committee not only concur in opinion with the honorable Secretary of the Treasury, but, in view of the other facts above stated, not adverted to by him, are of opinion that there is a pressing necessity for the erection of a suitable government building at that place for the accommodation of the courts and their officers, the post-office, pension agent, and internal-revenue collector, and therefore recommend the passage of the bill by the substitute submitted, limiting the total cost to $200,000.

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N. W. ALDRICH, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany bill H. R. 6321.]

Committee on the District of Columbia, to whom was referred the petiion of Rev. B. Peyton Brown and others, a committee representing the urches in the District of Columbia, for relief, beg leave to report:

hat the petitioners complain that the act which was passed in June,), to relieve the churches in the District has been construed to author- the Commissioners to tax parsonages and rectories. Prior to the r 1874, under laws then in force, parsonages and rectories were ex- ted from taxation in the District, and the committee are of the opin- that the same exemptions should apply in the year succeeding, and the act of June 21, 1879, should be so construed. They therefore mmend the passage of the accompanying act.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1574.

RAILROAD BRIDGE ACROSS THE DETROIT RIVER.

MAY 26, 1880.—Laid on the table and ordered to be printed.

Mr. AMOS TOWNSEND, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 984.]

The Committee on Commerce, having considered the bill (H. R. 984) to authorize the construction of a railroad bridge across the Detroit River, respectfully begs leave to report:

The bill before us, while by its title professing to give authority for the construction of but one railroad bridge, by its terms would admit of the construction of more than one. The first section makes it "lawful for *any* person or persons, company or *corporations*, having authority," &c., "to build a bridge across the Detroit River, at the city of Detroit, or within one mile above or below said city"; and the succeeding sections constantly repeat the term "any bridge" so constructed. Were the bill to pass in its present shape it would authorize the building of as many bridges across the Detroit Straits as there are persons or corporations (having other requisite authority) desiring to build them. Whatever considerations which forbid the building of even one bridge, such as is in this bill proposed, would militate to a still greater extent against the building of more than one. It is to the proposed construction of but one such bridge that the committee has devoted its attention.

The interests involved in the consideration of this subject are simply enormous. Two vast streams of commerce—the commerce of the great lakes up and down the straits, and the commerce by railroad ferried across the straits—intersect at Detroit. The straits are narrow, the average width being but 2,000 feet, and constitute the only possible water communication between the upper and the lower lakes.

From December 1 to April 1, a period of four months, in every year, owing to the formation of ice in the straits, this means of intercommunication between the lakes is practically closed. The ice, however, rarely forms to such an extent as to seriously interfere with the railroad steam-ferry system across the straits. Even in the coldest month of the coldest year yet known, whatever delays occurred in the crossing of freight and passengers were clearly surmountable so far as the ice was concerned, and were occasioned by the lack of facilities both on land and on water furnished by the railroad companies themselves. The delay thus occasioned is the reason for the bill under consideration, which, should it become a law, will force freightage into the only other available means of transit, the railroad companies, and increase the freight charges to shippers.

Seven years ago these railroad corporations and others interested in the project asked permission from Congress to draw-bridge these straits. Congress ordered an investigation to be made by a board of able Army engineers. That board met at Detroit, May, 1873, and subsequently made an exhaustive report to Congress (Report Chief of Engineers for 1874, vol. 1, p. 587), which declared:

1. That a bridge giving a clear headway (above water) of 150 feet, and clear spans of 400 feet, would not seriously injure navigation, but would be very expensive, involving long and in some places inconvenient approaches.
2. That no bridge giving passage to vessels by draws alone, with draw-spans at present practicable, can be permitted without serious injury to navigation.
3. That a bridge giving a clear opening of 700 feet, from April 1 to December 1, with two draw openings 100 feet in the clear, and with the permanent foundations of its movable piers 18 feet below the lowest stage of water, will not be a serious obstacle to navigation.
4. For the reasons heretofore given, although the question has not been directly referred to it, the board deem the crossing of the river by tunnels the only unobjectionable method; and from all information they have obtained they think a tunnel at Detroit (or Stony Island) is by no means impracticable, at a cost not so great as to debar its construction.

Finally, the board would remark that at no place between Lakes Huron and Erie should a bridge be permitted which would give less facilities to navigation than the one already discussed, having 700 feet clear opening; that no construction should be commenced without prior approval of the plan and location by the Secretary of War that under his direction the construction should be carried on so as, during its progress, to give least obstacle to navigation; that the opening of 700 feet should be left clear to navigation from April 1 to December 1 of each year, under severe penalties; so far as the interests of American commerce are concerned, the United States should that, as a portion of the opening might be in Canadian waters, to control this portion reserve the right at any time to stop the running of trains across the American portion of the bridge.

The report of this commission adverse to the scheme then proposed—similar to that of the present bill—was supposed to be a finality. It was thought that these railroad corporations would have let the matter drop, or have constructed "a crossing of the river by tunnels," which the commission had declared to be "*the only unobjectionable method.*"

Six years of inaction passed away, during which it would seem that increased facilities for crossing were provided by the railroad companies and during which the amount of inter-lake commerce was steadily and largely increasing. After all this time, they again, last year, approached Congress with this bill, and subsequently asked for the appointment of another commission of Army engineers. Congress, upon the statement that "recent progress in the art has shown the practicability of constructing bridges having spans of 500 feet, or possibly more," authorized the appointment of this second commission, in the words following:

Whereas recent progress in the art has shown the practicability of constructing bridges having spans of 500 feet or possibly more: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War is hereby authorized and required to convene a board of officers of the Corps of Engineers of the Army, whose duty it shall be to inquire into and report whether, for railroad purposes, the river Detroit can be bridged or tunnelled at the city of Detroit, or within one mile above or below said city, in such manner as to accommodate the large trade and commerce crossing the river at that point, and without material or undue injury to the navigation of said river; a good and sufficient tug being always kept by the bridge-owners to assist any craft when required.

It is believed that but for the statements in the preamble of this joint resolution no second commission would have been appointed. In view of that statement and the findings of the first commission, it was naturally presumed that the language of the preamble implied either a high bridge with fixed spans of 500 feet clear width, and a height (say from

100 to 170 feet), such as was recommended by the first commission, so to admit of the unrestricted passage of masted vessels, or a draw-brid with draw-spans of 500 feet *clear* width. Yet it subsequently appear that while several draw-spans have been built with 200 feet clear each side of a pivotal pier, none with a greater clear width than 250 fe had ever been constructed; and, further, the persons representing t railroad bridge interests before this second commission absolutely d clined to agree to any bridge higher than fifteen or twenty feet abo high water, which would make a five hundred feet fixed span absolute useless, so far as the lake shipping was concerned, and oblige it to through the narrow draw.

The report of the second commission of Army engineers, which s at Detroit last fall, is before us. Four members of the board, to w Generals W. F. Raynolds, N. Michler, O. M. Poe, and Col. D. C. Hou ton, sign the majority report, and the fifth member, Col. John M. W son, signs a minority report. The majority report states:

It is the opinion of the board that, with skillful navigators, there will be no ma rial difficulty in passing through clear openings of 300 or 400 feet at any time whe would be safe to navigate the river. With *the right of way clearly and emphatic given to navigation* there would then be no material or undue injury to that interest.

The board is of the opinion that the bridge should be located at a considerable d tance above or below the business portion of the city, so that its use will not be int fered with by the local traffic in front of the city in that part of the river which for the harbor of Detroit. The two points which seem best suited to the purpose are:

1st. At the lower end of Belle Isle. This is understood to be the least objectiona to the interests opposing the construction of a bridge.

2d. In the vicinity of the foot of Twenty-fourth street, in the city of Detroit.

There should be placed near the middle of the main channel, on the usual course through vessels, either *a draw-span, with a clear opening of not less than* 300 *feet on e side of the pivot-pier, or a single clear opening not less than* 400 *feet between the pivot-pier two adjacent draw-spans*, and, in addition, *at least one other draw-span, with a clear op ing of not less than* 166 *feet on each side of the pivot-pier*, placed so as to be used for c venience, or in case of accident to the main opening.

The fixed span should not be less than 450 *feet in the clear, and those adjacent to the m opening should have a clear headway of not less than* 60 *feet*, which height is readily tainable, without extraordinary grades.

A considerable portion of the craft plying the lakes will be able to pass unde bridge of this height, and thus obviate the necessity of opening the draw so quently.

The board would remark that it is not intended to convey the impression that i of the opinion that such a bridge as has been described will not be *to some extent an struction*. The language of the joint resolution, "material or undue injury," conte plates that there may be some obstruction, and the question the board has conside is, *whether*, in view of the great interests involved, *a bridge can be constructed* which ful fulfill these conditions. A good and sufficient tug, as contemplated by the joint re lution, would at times be of assistance in passing the bridge.

In case authority to construct such a bridge in this locality should be granted Congress, *it should be distinctly provided that vessels have the right of way*, and the dr be kept open except when trains are passing. That the plan and location be subj to the approval of the Secretary of War; that its construction be subject to his sup vision so far as relates to interference with navigation, and severe penalties should prescribed for any violation of these provisions.

The board is unanimously of opinion that the most complete solution of the problem is construction of a tunnel under the river.

This may be *located at any point* within the limits prescribed by the joint resoluti it is deemed *practicable*, and if properly constructed will accommodate the railr traffic, and be *no obstruction whatever* to navigation.

The minority report is in these words:

I fully concur in the above report as far *as relates to the tunnel*, but, after a car examination of the whole subject, I am satisfied that *any bridge other than a high* with spans of at least 450 feet, *will be an undue impediment to navigation*, and I am prepared to approve the construction of *a draw-bridge* that I believe a majority of th interested in lake commerce will pronounce *a material obstruction* to the navigatio this great national highway.

Here, then, we have a report from the second commission reaffirming the report of the first in all save one particular, and even upon that point the minority of the second commission agree with the first. Not an engineer on either commission claims that a draw-bridge of any sort will fail of being an obstruction to the lake commerce passing through those narrow straits; but if there *must* be a draw-bridge there, then a majority of the second commission describe the kind of a bridge it should be, in order that it may not prove an undue obstruction and a material injury to that commerce. But it must be specially observed and borne in mind that both commissions, every member on each of them, declares for a tunnel instead of a bridge. The language of the first commission is: "The board deems the *crossing of the river by tunnels* the *only* unobjectionable method." The second commission declares unanimously also that, "The *most complete solution* of the problem is *the construction of a tunnel under the river.*" But they say, *if*, in spite of the unanimous verdict of the two commissions in favor of a tunnel-crossing, Congress decides to permit the building of a bridge, then we will sketch a plan for its guidance; and in that case *if* the bridge is built at a certain point, and *if* there are "skillful navigators" employed, and *if* the "right of way is clearly and emphatically given to navigation," *then*, although there will be obstruction and injury to the inter-lake commerce, yet it will not be so material an obstruction nor so undue an injury, as in the case of a draw-bridge built on other plans at some other point.

The first commission proposed two plans, if a bridge *must* be built:

First. A bridge with a height above water of 150 feet, and fixed clear spans of 400 feet in width.

Second. A bridge with two draw openings, 100 feet in the clear, and a fixed clear opening of 700 feet in width.

The second commission proposed that *if* a draw-bridge must be constructed it should have—

> either a draw-span, with a clear opening of *not less than* 300 *feet on each side of the pivot pier*, or a single *clear opening* of not less than 400 *feet* between the pivot piers of two adjacent draw-spans, and in addition at least one *other* draw-span, with a *clear* opening of not less than 166 feet on *each side* of the first pier. * * * The *fixed spans should not be less than* 450 *feet* in the clear, and those adjacent to the main opening should have a clear headway (height above water) of *not less than* 60 *feet*, which height is readily obtained without extraordinary grades.

The minority of the second commission declares against a draw-bridge in any shape, and if there must be a bridge instead of a tunnel, it should be, he says, "a high one (meaning one high enough to give free passage to our tallest masts, say 170 feet high), with spans of at least 450 feet" in width.

It is clear, then, that if Congress should decide that a bridge may be built, it must be one such as has been proposed by some one of these able engineering authorities.

And the first question that here arises is whether the bill before the committee coincides in plan with any of these proposed structures? Did it so coincide in all respects with any one of them, there would still be insuperable objections to the policy of permitting it to be carried out. But it does not so coincide, neither in all points nor in any, with any one of them! It has, in fact, nothing in common with them, whether in height or width of fixed or draw-spans, and it violates even the pregnant precedent conditions upon which any structure of the sort is provisionally recommended by the engineers, to wit, those as to *location*, and as to the *right of way* for vessels.

The bill before us provides for a squatty draw-bridge only 16 feet high *above high* water (measuring to the bottom chord of the bridge), with

one (or more) draw-spans only 160 feet long on each side of a pivot pier, and with fixed spans only 250 feet long over the main channel of the river, and the right of way instead of being given to vessels is taken by the railroad corporation for their cars, in these words:

> And the said draw shall be opened promptly, upon reasonable signal, for the passage of boats and vessels, *except when trains are passing over the same*, but in no case shall *unnecessary* delay occur in opening said draw *during* or *after* the passage of trains.

Under this provision the bridge might "necessarily" be blocked with trains for hours at a time.

A bill somewhat similar to that before this committee, introduced April 22, 1880, in the Senate (S. 1661), and which the committee deem it best to take cognizance of, and consider its provisions in connection with this report, contains provisions no less objectionable. It provides for a draw-bridge with one (or more) draw-spans 200 feet clear on each side of the pivot-pier, and the fixed spans over the main channel to be 250 feet wide. This bridge is to be 20 feet high above high water, but, as it is not measured to the bottom chord of the bridge, it is no higher than the other. It provides that—

> The draw shall be kept open for the passage of boats during the season of navigation, except when railroad trains are passing over the same, and in no case shall unnecessary delay occur in opening the draw *after* the passage of trains.

The second section of the Senate bill is in these words:

> SEC. 2. That the bridge to be constructed under the authority hereby granted *shall not interfere with the free navigation* of said stream *beyond what is necessary in order to carry into full effect the rights and privileges herein granted.* The necessary detention of boats in passing said bridge *shall not be construed as interfering with the navigation of the river.*

It will be seen, therefore, that the Senate bill, while it concedes a slightly increased width for the draw-span over that in the bill before us, improves upon it in no other respect as to dimensions, and is otherwise more obnoxious, in that it permits even unnecessary delay *during* the passage of trains; expressly declares the proposed bridge "rights and privileges" paramount to the natural rights of free navigation; and, by declaring what is to be "construed" as an interference with the navigation of the strait, would actually deprive the teeming commerce of the lakes of recourse to the restraining influence of the courts.

The first commission, seven years since, appreciating the vastness of the lake carrying trade of that day, said:

> If the right of way were given to vessels passing through the draw (*as of course it must be*), it would subject the railroad trains to as severe a blockade as they have ever suffered heretofore from *insufficient ferriage.*

The advocates of and seekers for this bridge franchise have always, before both commissions and before this committee, acknowledged that the vessels must have the right of way, as a matter of course. The report of the second commission, admitting that a particular kind of bridge could be built without very great detriment to the lake commerce, is predicated upon this point especially, and lays great stress on it. It is there stated that—

> Those who favor the construction of a bridge over the river now admit that vessels should have the right of way, and say that the draw should *always be kept open, except* when necessary for the passage of trains *at such times as will not interfere with the passage of vessels.*

And in the official report of the proceedings before the second commission it appears that Mr. Joy, while addressing the board in behalf of the railroad and other interests, "laid stress on the fact that if a bridge was built the vessels should invariably have the right of way."

On the 18th of last October, Mr. Ledyard, representing them officiall "stated" to the Board of Engineers—

> That the railroad interests * * * would propose *two* draws with openings of 2 feet, one draw over each channel, and with spans of 400 feet, possibly 500 feet.

The Senate bill is the only proposition since offered. That propose *not* "two" draws, but "one or more," at their own option, of course, an really meaning but one; *not* "of 250 feet," but of "200 feet"; while th fixed spans, instead of being "400 feet, possibly 500 feet," are only "25 feet" wide!

Now, let us examine this project of a bridge across the Detroit Strait in others of its aspects.

These straits form the gateway of the commerce of the great lake and should be kept free forever from all artificial obstructions. Already, from natural causes, navigation is obstructed to a certain extent at the Saint Clair Flats, through which, in order to facilitate the tonnage movement, a canal has been constructed. While large sums of money have been thus expended in one part, is it good policy or good sense to allow artificial obstructions to injure navigation in another part of the same narrow water-way?

According to partly-estimated statements before the second commission it appears that the stream of railroad commerce by ferry across the straits at Detroit in 1879 represented an aggregate of 300,000 freight cars, which, if full freighted, would carry 3,600,000 tons of merchandise; 12,500 passenger cars, carrying 162,500 passengers, and 4,200 baggage cars. These figures are above rather than below the exact facts.

According to an official statement by actual count at Fort Gratiot Light furnished to the same commission, there was during the fisca year ending June 30, 1879, a steady stream of 9,705 steamers, 6,39 schooners, 4,395 barges, 1,108 scows, 523 barks, and 32 brigs; bein 22,150 vessels observed going up and down between the lakes. This i below rather than above the real facts. The number of tons thus tran ported through the straits by American vessels during the season 1879 is stated at actually 12,006,000 tons. But this does not take in account the tens of thousands of smaller vessels and their cargoes, nc the Canadian tonnage, nor the many immense timber rafts floated dow From a statement before the committee, the lake tonnage movemen appears to be far more enormous than is here represented. The regis ter of the United States Treasury Department shows that 3,087 steamers propellers, tow barges, and schooners, with a registered tonnage o 537,376 tons are engaged in carrying the commerce of the lakes, th estimated value of such vessels being nearly $60,000,000, and thei carrying capacity per single trip, 969,739 tons. The Canadian tonnage of one province alone (Ontario) similarly engaged is 219,684 tons Deducting 47,577 tons as not passing through the Detroit Straits at all the aggregate tonnage of vessels (one trip) passing this gateway is a least 1,141,846 tons. The average season's movement of schooner through the straits each way is 22 passages, and of steamers, propeller and tow barges, 28 passages. After deductions for short cargoes, i appears that the actual tonnage movements through the straits in thes vessels reaches the vast aggregate of 19,991,982 tons in the season o eight months. To this must be added the pinery tonnage of Michigan which, in rafts and otherwise, amounts to 2,340,000 tons. The aggregat movement through the waters of the straits is therefore not less tha 22,331,982 tons; and were capacity for carrying reckoned as actua carrying, as in the statement of railroad tonnage, these figures woul

have to be increased to 24,430,932 tons; thus showing a tonnage movement up and down the straits about seven and a half times as great as the railroad ferry movement across them. And it is this vast and constantly growing commerce of the lakes, that the railroad corporations with their comparatively much smaller tonnage would in all probability obstruct, cripple, and perchance destroy, by building a bridge across the straits.

Large, however, as is the moneyed value of the vessels and of the various producing and other interests thus engaged in peaceful commerce, and important as it is to encourage the increase of our lake merchant marine as a school for the American seaman, these considerations are absolutely dwarfed by comparisons with other and weightier ones.

Our great lake system comprises Lakes Superior, Michigan, Huron, Erie, and Ontario, connecting through the Saint Lawrence and the Welland and Erie Canals with the Atlantic Ocean, on the one hand, and on the other reaching far west into the very heart of the continent. Upon or near the margins of these noble inland seas sit the great cities of Milwaukee, Chicago, Detroit, Toledo, Cleveland, Rochester and Buffalo; the large towns of Duluth, Houghton, Hancock, Marquette, Saginaw, Bay City, Port Huron, Sandusky, Erie, Oswego, Ogdensburgh, and innumerable smaller ones. Their waters wash the boundaries of the great States of New York, Pennsylvania, Ohio, Illinois, Indiana, Michigan, Wisconsin, and Minnesota. As was well said before this committee: "The entire domain of the American and the British Northwest is tributary to our lake system"—a domain capable of supporting 20,000,000 of people in comfort. With improved, instead of obstructed, navigation, in less than a quarter of a century, such a population will be there, and the commerce of the lakes, already amazing, will have grown to still vaster proportions. It is therefore not alone to the necessities of to day, but to the requirements of the future, that we should look in legislating on this vital question. Already America is regarded as a granary of Europe. We have in the Northwest the abundant space, the virgin soil, the favorable climate, and cheap transportation by water and otherwise to enable us to successfully compete with the Russian, the Pole, and the Egyptian grain-grower in the markets of Europe. Providence has given us all these favorable conditions for growth and prosperity. Shall man step in and suppress or obstruct one of them? Rather should it not be our duty to improve this natural highway, so that the present cheap transportation to the seaboard shall be even cheaper? The prevailing business and financial prosperity of this country may largely be attributed to the necessities of Europe, and the ability of the great Northwest, through its grain production and cheap transportation, to supply them. It was this that gave us the large balance of trade in our favor, and the heavy shipments of European gold to our shores, which gave a new impetus to the wheels of our industries everywhere, and brought again abundant prosperity and contentment to this land. Shall we undo it all again, by blocking the commerce of the lakes? The freight rates from Chicago to New York, via the lakes, fix the railroad rates, and your committee believe that the construction of a bridge at this point of any kind that would be of use to the railroad companies, would seriously obstruct the navigation of the straits and tend to appreciate the price of freights and destroy to this extent that healthy competition so essential to the best interests of that whole country. This cannot be doubted.

The difficulties in crossing the straits complained of by the railroad companies can be met and *overcome by* the construction of a tunnel

under the straits, which is not only practicable, and in the long ru much cheaper than a bridge, but would secure absolute immunity fro obstruction both to the stream of railroad transportation crossing unde and to the stream of marine transportation passing along the surface o the Detroit Straits, furnishing as both engineer commissions declar the "only complete solution of the problem."

Is it questioned that a bridge will increase the cost of transportatio through the straits? Let us see: the elements which would produce such increase are delay and danger. The engineer commissions de clared in effect that with a certain specified bridge, at some specified point, and with the right of way to vessels, while an obstruction, it would not be a material one. In other words, that it would delay, but not materially delay, the vessels. Hence, there would be a consequent increase, but not a large increase, of cost attending transportation in them. But the bridge proposed in the bill before us, as also in the Senate bill, is a very different and infinitely more obstructing structure, and the right of way is *not* given to the vessels. Hence, with it there would not only be delay and obstruction, but most serious delay and obstruction, and such as would very materially injure the lake trade, and increase the rates of transportation by vessels to an extent perhaps absolutately prohibitive.

Touching the question of danger, also, much might be said. During the past season, for instance, the Marquette Iron Association, which protests against a bridge, shipped, in sailing vessels passing through the straits, 1,400,000 tons of iron ore. This is dead weight. This would freight 1,400 vessels with 1,000 tons of iron ore in each. A vessel so loaded, if it struck a pier, would sink like a shot. A sudden change of wind to abeam or on the quarter, while a vessel is going through the narrow draw-span, might force it against the pier, and result in the destruction of valuable property, and perhaps human life as well. The length of the season is 244 days, and, with 1,400 such loaded vessels going through in a season, there would be this danger presenting itself six times every day. One such loaded vessel thus sunk in the draw span would obstruct the channel so that all navigation by large vessels might be absolutely blocked for weeks, or even months, before it could be removed.

Nor is this the only source of danger. The statement before the second commission of Alger & Smith, largely engaged in the long pine timber business, and who, for some reason, favor the construction of the bridge, will illustrate it. They state that during the season of 1879 they towed 40,000,000 feet, broad measure, down through the Detroit River their rafts ranging in size from 1,000,000 to 2,000,000 feet. They said

> A raft of 1,000,000 feet, [their smallest] would average about 1,800 feet long and 10 feet wide; and for each 250,000 feet, 25 feet in width may be added at the outside, but nothing in length, as rafts are usually about the same length, and are enlarged by adding to the width. A good average raft contains about 1,500,000 feet. A raft containing 2,500,000 feet would measure 250 feet scant across it. This is an oversize raft and larger than ought to be towed at one time.

It will thus be seen that while the average raft is 1,800 feet long and 150 feet wide, they often are 1,800 feet long and 200 feet wide. The lengths of timbers forming them range from 50 to 100 feet and over, with a thickness at the butt varying from 2½ to 4 feet. Imagine, then, one of these large rafts compacted together of these long and heavy logs, with heavy chains and iron clamps and other strong fastenings, more than twice as wide as the rotunda of this Capitol, and nearly two and a half times the length of the entire Capitol building, moving down the four

mile, and 35 to 40 feet deep current of the Detroit straits, towed by a steam-tug at the rate, perhaps, of six miles or more per hour. Before it, across the straits, is stretched the low bridge with its fixed spans of 250 feet in width. All seems fair and promising, but suddenly the huge raft's course is slightly changed by bad towing or bad steering, by a sudden gust of wind, or by a change in the current, and crash against the pier goes this enormous battering-ram of 4,000 tons weight with a velocity of nine feet per second. Could any bridge structure stand such a shock? Hardly. It would wreck both raft and bridge in one common ruin, and obstruct the channel with the *débris* of both. Without taking account of the terrible sacrifice of life, should passenger trains be crossing the bridge at the time of the catastrophe, it is enough to contemplate the destruction of property and the obstruction to navigation by the snarled and tangled mass of timbers and sunken obstructions caused by such a collision and wreck. Were the spans of the bridge fixed at even 700 feet in width, there would still be great danger at times; but, with spans of but 250 feet, to expect such tremendous battering-rams, 200 feet wide and over one-third of a mile long, to go through without damage to themselves or to the bridge, or both, is expecting altogether too much.

It is sufficiently palpable, then, that both delay and danger to the lake navigation—very damaging delay, and very great danger, too—may justly be anticipated in the event of the building of this bridge, or, indeed, any bridge. And this view is borne out by the statement of Capt. W. B. Guyles, who, as agent of the insurance companies, gave to the second commission his opinion that "the construction of a bridge would increase the rates of insurance 20 per cent." Such an increase in rates of insurance, and a corresponding increase in freight rates by vessels, which is equally inevitable, would increase the railroad transportation rates correspondingly. The effect of such an increase of lake freights would, to this extent, enable the railroad companies to increase their tariff of rates, and in this respect would be greatly to their advantage. Were it otherwise, why, we repeat, do they not build a tunnel, and cross under the passing shipping at the straits? Let us see.

Before the second commission plans were presented by experts, both as to bridges and as to tunnels, and were explained and discussed, but not reported on in detail, because the joint resolution creating the board did not call for such detail. The report simply states that—

> It is now proposed by bridge builders of high reputation to construct them (draw openings) with openings of 300 feet on each side of a pivot pier, or 400 feet between two pivot piers.

In their journal of proceedings, however, it appears that—

> Mr. Charles Kellogg, of Buffalo, a bridge builder, presented plans for a bridge with a draw-span of 650 feet, and two clear openings of 300 feet; which bridge, *exclusive of approaches*, he stated would cost about $1,000,000.

On the same day plans for a tunnel were presented, and the statement made that: "A tunnel could be built at Twenty-fourth street (Detroit) for $1,250,000, and at the Detroit and Milwaukee depot for $1,800,000."

It is apparent, then, that the cost of a submarine tunnel and the cost of a draw-bridge of this character, including its approaches, would be very nearly the same. But were the former to largely exceed the latter, it would still be the cheaper in the end, because the most permanent of the two. It is true that the question of practicability is raised against such a tunnel, but only by the interested parties who seek the bridge franchise. Not only were both of the engineer commissions unanimously in favor of a tunnel *under the straits*, but they also declared it

practicable, and the authorities in engineering, who appeared before them, concurred in this.

It was stated before this committee that the Michigan Central Railroad Company in 1872 undertook, at considerable cost, at one particular point, to run a preliminary submarine tunnel, but quicksands were encountered, so that the work was slow, and therefore it was abandoned. Yet it is shown that the superintendent of that work, alluding to its suspension, declared that "Those who come hereafter and build this tunnel will wonder what obstacles stood in the way." The engineer who was in charge of that work still holds that it is entirely practicable.

The Hudson, between New York and Jersey City, can be tunneled under miles of space by a private company; the Housatonic Tunnel could be run for miles through the hardest rock at an enormous expense; the Baltimore and Potomac Railroad, partly to avoid delay in going around or through Baltimore, could afford to construct a tunnel, and this tunnel is about 7,400 feet (1⅓ miles) in length, more than twice the length of a tunnel necessary under Detroit Straits. Its size is 22 by 27 feet; it runs under the beds of 29 streets, and the cost for construction, including approaches, was $1,320,000, the right of way and damage to private property costing about $1,000,000 more. None of these needed aid from the government, but were built by private enterprise; yet these great Michigan and Canadian railroad corporations say that they cannot raise or expend of their own means the comparatively paltry sum of $1,250,000 or $1,800,000 necessary to construct beneath the Detroit Straits this international tunnel, and that it cannot be done unless the United States Government subsidizes it. Were the cost of such a tunnel double or treble either of these amounts, those great railroad corporations would find it in the long run a profitable investment; and with the alternative rigidly fixed before them that they must either build it themselves or continue to cross the straits by means of a more efficient ferry service, many years would not elapse before the means would be found and the tunnel built.

The Baltimore and Potomac tunnel was considered a necessity mainly because it should not interfere with or in turn be interfered with by the ordinary business of a great commercial city. How much the more necessary is it that the overshadowing business of the five great lakes and of the eight great States resting on them, involving the present prosperity and the future development of the whole Northwest, and even extending to the starving millions of Europe, shall not be interfered with or obstructed or injured, much less destroyed, as it would be, by the proposed bridge.

Bridge the Thames below Woolwich, the Mersey below Liverpool, the Baltic at Copenhagen, the Mediterranean at Gibraltar, the Straits of Dover, the Golden Gate of San Francisco, or the Narrows of New York with any kind of a draw-bridge, and the civilized world would stand amazed. Yet here is a proposition to draw-bridge the gateway of all our great inland-sea commerce, which is equally as extensive as the ocean commerce of some of these. Is this doubted? Then count the 8,07[illegible] foreign and the 13,313 coast arrivals at the port of New York during the whole of 1879, and against this sum of 21,390 vessels place the total *observed* passages during only eight months of the same year of 23,00[illegible] vessels, each carrying an average of about 1,000 tons, through the narrow straits of Detroit.

Some idea of the wide-spread alarm occasioned by this railroad bridge project and the unanimity with which the business and commercia

ts condemn it may be gathered from the many protests sent in to ond commission and to this committee.

great State of New York, by its legislature, declares that "the oute from Chicago to New York confessedly fixes railroad rates country"; that "it is of vital importance that the water-route be ed free and unobstructed," and protests:

* * * the erection of such proposed (bridge) structure would impede the ion of the lakes, be prejudicial to the commerce of the country, and is, there- xpedient and unwise.

State of Ohio, by its legislature, protests that—

portation at the lowest possible cost between the East and the West can only ed and maintained by preserving the great water-way (through the Detroit free and unobstructed; * * * the construction of such a bridge at this st channel on the whole line of water communication would seriously impede ire its commerce; * * * the mining, manufacturing, and agricultural in- f the State of Ohio are directly concerned in the preservation of this channel free to the interchange between herself and sister States of all raw and man- d products; * * * the free and unobstructed use of these waters is a right of the people, which government should never permit to be abridged or d by concessions to individuals or to corporations.

State of Wisconsin, by its legislature, declares that the bridging Detroit Straits—

l very materially injure the commercial interests of our great lakes, by ob- g this important avenue of our immense commerce, and would be productive culable mischief and serious loss to our lake marine, and in conjunction with ates and communities interested in the commercial welfare of our great West- es * * * most earnestly and emphatically protests against the bridging etroit River, for the reason that extensive marine interests would be seriously by detention, damage, and other causes that would necessarily follow the ob- g of this great national channel-way at a point where there is an average f one craft every six minutes demanding a safe passage.

State of Minnesota, through its governor (the legislature not be- session), declares that—

ast and growing commercial interests of this State and of the rapidly settling north and west demands unobstructed navigation through the great lakes ir connecting channels. It is, indeed, difficult to exaggerate the magnitude interests or the rapidity of their development. The annual wheat export of e alone averages 25,000,000 bushels, a large proportion of which seeks water o the seaboard via the great lakes. A much larger proportion of the grow- ucts of Dakota are dependent upon this route alone for the means of reaching t, while the transportation which will be required with the development of cultural and mineral resources of the vast country drained by the Northern ailroad baffles computation An ample and unimpeded water communication a long time be the only defense of these growing interests against railroad tions, with whose freight exactions they are constantly threatened. Any- herefore, which jeopards this free water transit as a means of competition in tation is justly a cause of alarm. That the proposed bridge over the Detroit ill prove an obstruction to such free navigation cannot be doubted, and I , in behalf of the people of this State, of the vast country whose interests ly involved, protest against its construction.

State of Michigan, more than $30,000,000 of whose products passed h these straits in 1879; the State of Pennsylvania, which relies waterway for the receipt of those immense quantities of iron ore sustain her iron industries, and for the transport up the lakes of ous quantities of her coal product; and the States of Illinois and a, whose immense productive and other interests are equally in- , would, we are assured, were their legislatures in session, protest ally emphatic terms.

ests pour in, not alone from legislatures of States, but from the of trade and chambers *of commerce of* Boston, Buffalo, Chicago,

Cleveland, Duluth, Milwaukee, Marquette, Minneapolis, New York, Oswego, Pittsburgh, Saint Paul, and Toledo, as well as from many of "the real-estate owners, tax-payers, and solid productive interests" of Detroit, all of them strenuously opposed to the erection of a bridge. So, also, the American owners and agents of the steam and sail vessels of the great lake system, representing an investment of $60,000,000, declare that "cheap water transportation is absolutely essential to free commercial exchange between the West and the East;" that "this inland water system supplies the only means of such cheap transportation for the products of the forests, the fields, and the mines of the West and Northwest to the East and to Europe," and solemnly protest that "a swing bridge at this point would be a dangerous hinderance to free navigation, perilous alike to shipping and to a bridge should one be constructed."

These protests from legislatures, from chambers of commerce, from boards of trade, from vessel owners and others, represent the producers of raw material, the manufacturers, the carriers, the sellers, and the consumers, from the Atlantic coast to the farthest confines of the lakes, comprising more than 25,000,000 of interested people, and an aggregate capital of incomputable millions. Against the united voices of this multitude and this vast aggregated capital, against the development and best commercial interests of our country, these railroad interests persistently importune Congress for permission to build this bridge at Detroit.

Railroad transportation is without question of incalculable benefit in developing the resources of our country, and will continue its greatest benefits just so long as its freight charges are held in check by competitive water transportation. But it is of the highest importance, for this very reason, that the great waterways shall not be in the slightest degree obstructed. To improve them, so as to admit of larger and freer and safer navigation, has been the prevailing policy of this government hitherto, and it is manifestly its duty to protect them from encroachment or obstruction from whatever source. It is not likely that so beneficent a policy will be reversed. To reverse it would be suicidal. How, then, can it reasonably be supposed that this government will consent to the obstruction of an already free and safe and most important waterway? God gave us that vast chain of inland seas and narrow connecting channels as a means toward our national development. It is not the policy of this government to retard it. Lake navigation must be forever free, its gateways not ajar, but always wide open.

Your committee, therefore, after a full, impartial, and thorough examination of this whole question, giving due weight to the vast interests represented by the railroad corporations and the importance and necessity of keeping the great water highways open for navigation and free from obstruction, is forced to the conclusion that any bridge, even were it built in accordance with the limitations suggested by the board of engineers, would seriously, if not effectually, obstruct the navigation of the Detroit Straits, and that the solution of this question will be found in a tunnel under the bed of the river, which can be constructed at a reasonable cost, affording ample relief for the present and future wants of this class of transportation.

Your committee is therefore opposed to the construction of any bridge at this point, and recommends the indefinite postponement of the bill (H. R. 984), which it now reports back to the House.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1575.

LEVEES AND IMPROVEMENT OF THE MISSISSIPPI RIVER.

MAY 26, 1880.—Recommitted to the Committee on Levees and Improvements of the Mississippi River and ordered to be printed.

Mr. DUNN, from the Committee on Levees and Improvements of the Mississippi River, submitted the following

REPORT:

The subcommittee of the Committee on Levees and Improvements of the Mississippi River, to whom was referred the report of the Mississippi River Commission, and who, by the resolutions of the House of Representatives and of the Committee on Levees and Improvements of the Mississippi River, were directed "to proceed down the Mississippi River to its mouth, at such time as the committee may determine, for the purpose of acquiring a knowledge of its peculiar conditions and wants, and to gather information relative to the best methods for its improvement," &c., submit the following report:

In obedience to said resolutions, your subcommittee left Washington City on the 2d day of May, 1880, and proceeded direct to Saint Louis, Mo., by railroad, arriving at said city on the evening of the 4th, from which point they proceeded to the mouth of the river.

On the 6th, passage was taken on the steamer James Howard, from Saint Louis to New Orleans. This vessel has a beam of 55 feet, a length of 322 feet, and a registered tonnage of 2,321 tons. Her carrying capacity is about 3,000 tons on a draft of 11 feet. The displacement is about 1 foot for 450 tons. Her cargo aggregated about 3,100 tons in weight, and was composed as follows:

Cargo, May 5, 1880:

	Average weight.
3,781 barrels flour	216
2,422 barrels meal	220
937 barrels pork	330
53 barrels whisky	375
50 barrels tallow	400
66 barrels oil	400
7,490 sacks corn	165
6,593 sacks oats	165
708 sacks bran	180
1,007 bales hay	300
854 bales cotton	500
250 pieces bagging	100
2,061 packages sundries	

This cargo was carried unbroken to Vicksburg. Below that point it was distributed at about seventy landings, including towns, country stores, plantations, and farms. The trade seems to be direct between the producer and consumer, and thus yields the largest benefit to both.

On starting, the river at Saint Louis was about half stage, or midway between *high and low water. This condition* indicated a depth of about

16 feet more than the low-water channel, which may be assumed at 4 feet (that prevails, disturbing navigation, three or four months annually). A channel of about 20 feet depth might, therefore, have been expected, affording unobstructed navigation even for the very large vessel on which we had embarked. But, in fact, frequent soundings were found necessary, which in many places showed a depth not exceeding 12 or 14 feet.

Owing to the incessant shifting or changing of the channel, it was found necessary to tie up at night on the upper part of the river. This phenomenal condition is characteristic of parts of the stream where the width is excessive, or where it is divided into separate channels or chutes by bars or islands, and is explained by the principles enunciated and the processes described in the report of the Mississippi River Commission.

Approaching Cairo, navigation was found better, on account of the back-water from the Ohio. The high water prevailing on this stream filled the Mississippi nearly to danger-line from Cairo down. There was abundant evidence, however, that earlier in the season few, if any, points had escaped the general and disastrous overflow. Examinations of the river should be made during a great flood, and also at extreme low water. These conditions exhibit most clearly, and from different points of view, the necessity of—

Correcting, permanently locating and deepening the channel, and protecting the banks of the Mississippi River, improving and giving safety and ease to the navigation thereof, preventing destructive floods, and promoting and facilitating trade, commerce, and postal service.

A study of these conditions is, therefore, necessary for the proper consideration of and maturing a plan for accomplishment of these great objects,

Although your committee did not enjoy the advantages of observation afforded by either of these extreme conditions, they return fully impressed with the importance and necessity of the proposed improvements, and with defined opinions concerning the character of the methods required for its attainment.

A subcommittee should visit the river during that part of the autumn when the lowest water may be expected, provided with sufficient appropriations to travel to such points and remain such time as a more thorough investigation may require.

The constant association of characteristic phenomena, wherever the navigation is very good or very bad, indicates clearly the relation of cause and effect existing, and suggests the appropriate means of improvement.

Wherever the width of the river is unusually great, or where it is divided into separate channels, serious obstructions occur. Through a narrow and undivided bed deep water is always found. Inequalities of width are caused by the caving of the banks. As bars and islands are formed by this process, they serve to intensify the original cause.

No natural cessation of the agencies now at work—destructive to navigation—can be anticipated.

We are of opinion that a process that will arrest the caving of the banks, and will develop the bars outside the width of channel assumed as necessary into new shore-lines, conserving and strengthening the scouring power of the current, instead of retarding, diverting, and dissipating it, as they do in their present condition, is eminently necessary, not only for restoring the measure of navigation already lost, but to arrest the progress of deterioration, which is steadily going on.

Your subcommittee have found that the parts of the levee system remaining range from about 4 to 20 feet high, comprising dikes attaining the height of 35 feet over bayous and sloughs. Where such dimensions are reached, their maintenance is important in preventing the depletion of the river and the resulting injury to navigation through the outlets which their destruction would cause.

The present provision by the States in which these works are located for their preservation or restoration is inadequate and uncertain. It is also doubtful whether these States should be solely charged with these works, which, while they were built by them exclusively for protection from overflow, serve a national purpose in preventing destructive floods, and in maintaining and improving by the removal of sand bars the navigation of our inland waters.

In referring to this connection of levees with the navigation of the river, we quote from a board of engineers:

> The next obstacle to the improvement of the low-water navigation and to maintaining a levee system is one and the same for both, namely, the instability of the river from the caving of its banks. When this can be overcome by means not inordinately expensive (on which subject we have treated more fully in our preliminary report on the low-water navigation of the river), we may expect a deepened channel, a lowered high-water surface, and a stable river, the margins of which shall be securely cultivated to the enormous development of the wealth and population of the region.

From a careful comparison of our observations with the report of the Mississippi River Commission, we are of opinion that the description and explanation contained therein of the natural operations now progressing to the detriment of the navigation of the Mississippi River are apparently correct; and, also, that the methods therein recommended for the treatment of the Mississippi River appear to be correct, and should be tested.

This is demanded both by the steady increase of the evils to be abated and by the trade of the Great Mississippi Valley seeking distribution and outlet.

Your committee forbear to enter upon any elaborate statement of facts showing the vast interests involved, preferring rather to confine themselves to the best means for benefiting and improving the navigation of the river in the interest of production, commerce, trade, and the general welfare.

All are familiar with the great resources of this mighty valley, embracing an area of about 2,000,000 square miles, with a population of near 30,000,000, and in 1879 producing 87 per cent. of the entire corn crop, 69 per cent. of the wheat, 72 per cent. of the rye, 75 per cent. of the tobacco, 74 per cent. of the cotton, 71 per cent. of the hog crop, and almost the total sugar crop of the country, which, less the cost of transporting, represents the immense productive powers of the valley. Carefully gathered statistics also show that the manufacturing and mining interests and capabilities of this region will soon equal, if they do not surpass, the older communities in other parts of the country.

It has been well said that "manufactures run along the lines of least resistance"; and, with the abundant supply of raw material, with food and land cheap and plentiful, the Mississippi Valley is destined to develop upon as grand a scale in this direction as it has already done in the line of agriculture.

The foregoing statements give some conception of the territory, population, products, commerce, and manufactures affected, in a local sense, by the proposed improvements. But we may here repeat, with empha-

sis, what was said by a member of the House when the subject of th river and valley were before it:

The magnitude of the interests involved may properly be held to concern the wh country, and if the "general welfare" clause of the Constitution can be invoked at a surely it would apply here. Indeed, we way go further and, adopting the langua of the memorial of the late Quincy Improvement Convention addressed to Congre fairly say "that the subject presented for your consideration is, in its full bearing, a confined to the interesting region for the needs of which we speak, nor yet to t whole country, which you represent. It is lifted to a higher plane; becomes intern tional in its character; and is, in a large degree, of interest to the whole civiliz world."

Permanent resuscitation and maintenance of all commercial and bus ness industries must come from the soil. The question for solution not how much can we produce, but how much can we sell?

The vital point of the whole matter is found in the proposition that th interest and value of this immense product and commerce are depend ent upon the methods by which the markets of consumption can b most cheaply reached:

At the foundation of this inquiry [say the memorialists above referred to] lie thre propositions, so clear that they may be regarded as commercial axioms. * * * These are—

First. The price obtained for the surplus fixes the value of the whole production—as the home market generally rules at the prices of the foreign—less the cost of transfer. Thus the saving to the people of the valley who till the soil of 1 cent per bushel on wheat and corn for the year 1879, would, according to the figures of production, aggregate a sum total of nearly $15,000,000.

It is not unreasonable to estimate that the deepening of the channel of the Mississippi River will lessen the freight, carriage, and insurance rates of the cereals alone to the seaboard at least 5 cents per bushel, which gives in round numbers $75,000,000 per annum on the present yield.

Second. The rate by river determines the rate by rail. But we are confronted here by the difficulty that there is a limit to railway capacity. * * * The improvement of the water-ways is as necessary to bear away our enormous and constantly increasing surplus of production as it is to regulate the rates at which products shall be moved.

Third. The deeper the channel, the larger the vessel employed; the greater the capacity of the vessel, the less the cost of carriage, is the law of water-freights. Thus cheap transportation is the basal thought of all that can be planned or accomplished. It is the vital and paramount, as it is, throughout the country, the all-absorbing and overshadowing question.

In conclusion, adopting the eloquent language of a distinguished member of this House, your committee asks, the whole country asks:

Why should you not improve the Mississippi River? It belongs to no State; it cannot be monopolized; it is beyond the reach of corporations; it is the nation's free highway; it is the national outlet of a mighty valley, 1,500 miles wide and 2,000 miles long; the richest and largest in the world, penetrated by 50,000 miles of boatable streams; it affords the cheapest navigation known, furnishing itself propelling power. A single steam-tug with barges will bring down more wheat than can be moved on fifteen hundred freight cars, and at half the cost.

We are spending between three and four millions of dollars per year, wisely as we think, to improve the tributaries of the Mississippi River, and should improve the Father of Waters itself, this great trunk-line, this central highway of commerce, so that it shall not remain blocked up or be permitted to convert itself into a shallow waste, useless and dangerous.

P. DUNN,
W. R. MYERS,
B. W. HARRIS,
C. D. PRESCOTT,
H. L. HUMPHREY.
Committee.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1576.

LANDS IN SEVERALTY TO INDIANS.

MAY 28, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SCALES, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5038.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 5038) to authorize the Secretary of the Interior to allot lands in severalty to Indians, having carefully considered the same, respectfully report:

Three questions naturally arise in considering this bill:

1st. Whether it is competent for Congress to change the provision of Indian treaties, or the present law upon this subject, by such an act;

2d. Whether, admitting the necessity for such legislation, there is any other or better mode by which the objects of the bill can be accomplished; and

3d. Whether the proposed legislation is expedient and necessary to protect Indians in the possession of their lands and to aid them in their efforts to ameliorate their condition.

In regard to the first proposition, it has not been a disputed question since the decision of the Supreme Court in the Cherokee tobacco case (11 Wallace, p. 620) as to whether an act of Congress would repeal a former treaty, if they were repugnant to each other.

The Supreme Court, in this case, says that—

> It is insisted that the section cannot apply to the Cherokee Nation, because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnance is clear and they cannot stand together. * * * The effect of treaties and acts of Congress when in conflict is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty.

It is clear that an act of Congress can alter the provisions of Indian treaties; and the second question naturally presents itself, as to whether said treaties can be changed or altered in any other way, and if additional legislation is needed, what body this duty devolves upon.

The act of March 3, 1871 (16 Stat., p. 566), contains the following provision:

> That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty. * * *

Since the passage of this act no treaty has been concluded with Indian tribes, and all laws upon Indian matters not pertaining to the domestic affairs of the Indians have been by enactments of Congress. By the act above mentioned Congress has deprived the treaty-making power of all authority or responsibility in the premises, and assumed the

duty of legislating for the Indians whenever such legislation may be needed.

Acts abrogating, repealing, and amending the provisions of Indian treaties have been repeatedly enacted since the date of the act of 1871.

In some cases agreements were first made with the Indian tribes stipulating and providing for such changes, &c., which agreements, or the substance thereof, were embodied in the act, while in other cases the acts were passed without consulting the Indians, but they were not to take effect until the Indians assented to their provisions.

The ninth section of the bill under consideration provides—

> That the provisions of this act shall not extend to any tribe of Indians until the consent of two-thirds of the male members twenty-one years of age shall be first had and obtained.

While this bill proposes to alter and change certain portions of Indian treaties, it cannot possibly violate any obligations assumed by the government towards the Indians, as its provisions are not to be applied to any Indian tribe until a majority of such tribe consent to the same.

As Congress has the sole authority to legislate upon the subject of this bill, the only remaining question to be considered is as to the expediency of such proposed legislation.

The Indians in the United States have been a race of hunters, and the larger proportion of them, until within the last twenty-five years, lived principally upon game and what was contributed to them by the United States. The system of holding lands in common was well adapted to the condition of the Indians, so long as they were isolated from the whites and followed no other pursuit for a living than that of hunting but their reservations now are small, white men are encroaching upo them on all sides, and the game has almost entirely disappeared. Th Indians have shown no capacity or inclination to engage in mercanti or any other pursuit, except that of agriculture, and if laws are not ma to encourage and enable them to make their living in this way, th will soon be entirely dependent upon the government for their suppo

Experience has shown that the system of community of lands creat idleness, inefficiency, and dependency, and this is especially true in r gard to the Indians.

The progress made by the Indians who have received allotments land in severalty clearly demonstrates the practicability of the provi ions of the bill under consideration, and the advantages to be derive by the Indians from holding their lands in severalty.

Lands were often ceded to individual Indians east of the Mississip River by the old treaties, but they were granted without proper restri tions on the power of alienation, and in some cases the Indians we compelled to sell their lands within a specified time. Those who we allowed to retain their reserves were forced to separate from their bret ren and submit their person and property to the laws of the State whe their lands were located. In brief, the effect of the provisions of the treaties was merely to give to the Indians the privilege of selecting tract of land for the purpose of sale. No guarantees securing the po session were made, but, upon the contrary, it was the settled policy the government to encourage and compel the Indians to surrender the lands and remove west.

In 1854 and 1855 treaties were made with a large number of India tribes providing for the allotment of their lands in severalty. As th experiment was tried more extensively in Kansas than in any oth State under these treaties and later ones, it is necessary that an exam nation in brief should be made of the condition of these Indians whi

holding their separate tracts, and at the same time comparing the allottees with those Indians in the same State or vicinity, and in some cases of the same tribe, who continued to hold their lands in common.

It should be first stated, however, that none of the treaties referred to contained sufficient restriction to prevent the Indians from alienating their reserves, and on this account their progress was retarded by white men who were endeavoring to obtain possession of their lands.

During the years intervening between 1855 and 1861 the following Indians in Kansas received allotments of land in severalty, viz: A portion of the Shawnees, the Miamies, the members of the confederated band of Peorias, Piankeshaws, Weas, and Kaskaskias, the Pottawatomies, the Chippewas and Munsees, a portion of the Wyandottes, and the New York Indians.

The Delawares received allotments in 1861 and 1865, and a portion of the Kickapoos and Ottawas in 1863.

The Osages and Kansas Indians held their lands in common until their removal, and a few Iowas and Sac and Foxes of Kansas, and a portion of the Pottawatomies and a portion of the Kickapoos, still hold their lands in common.

Commissioner Dole, in his annual report for 1864, p. 37, says that the—

> Shawnees, who number about 860, have advanced well in civilization, a large portion of them owning and cultivating their lands in severalty, and but for the vicinity of the Missouri border, the farmers would have realized a fair return from their labor.

The Shawnee agent states, in his annual report for 1866 (Report of Commissioner of Indian Affairs, p. 259), that—

> By reference to the statistical returns of farming, &c., accompanying this report, it will be seen that a much larger breadth of land has been cultivated than in any former year and with much more favorable result. While taking the census I visited every house and farm belonging to the members of the tribe, and I was often agreeably surprised to find well-cultivated fields where, from my knowledge of the owners and their former habits, I expected to find nothing. * * * On the farms of the most intelligent we find every variety of crops, together with apples, pears, peaches, and grapes, while the ignorant and uncivilized are content to live upon pounded corn raised mostly by the female portion of their families. Of this *latter class there are but few who hold their lands in severalty, while nearly all who hold their lands in common properly belong to this class.*

In report for 1867 the Shawnee agent says that—

> The farming pursuits are carried on with considerable degree of prosperity by almost one-eighth of the tribe, *all of whom are severalty Indians.*

Most of these Indians were shortly after this removed to the Indian Territory, and have since made but little progress in civilization.

Agent Colton, in annual report for 1868, p. 267, states that the confederated Peorias, &c., decreased in the eighteen years from 1836 to 1854 1,166, or nearly five-sixths, while the decrease of the tribe from 1854 to 1868 was only one-third. The Miamies decreased in numbers from 1846 to 1854 five-sixths, and about one-half from 1854 to 1868. The agent says that "the decrease has not been as rapid and startling of late years is owing principally to the fact that they have lived more comfortably, have had warm homes, and drink less whisky." The statistics given in said report of the number and character of the houses and the quantity and value of the produce raised by said Indians show that they had been industrious and prosperous.

The agent for the Pottawatomies, in his annual report for 1862 (see Commissioner of Indian Affairs' Report for 1862, p. 118), speaks very flatteringly of the condition and prospects of said Indians. He says that they—

Are fully aroused to the practical utility of the dignity and productiveness of labor, and even the wild portions have cast off the absurd idea that appears to exist among the weak minded, * * * and have gone to work with a determination and will which surpass the most sanguine hopes of their warmest friends, and predict, with unerring certainty, that not many years hence we shall be able to reckon among the Pottawatomies the best farms and the wealthiest farmers in Kansas. * * * It [meaning the allotment of lands to the Indians] has in fact been the great stimulus to labor, and has aided very materially in bringing about the happy feeling that exists between themselves and the government. A large majority of the Pottawatomies appreciate fully the value of individual right in property.

Agent Palmer, in 1865 (office report for 1865, p. 376), states that—

A large proportion of that part of the tribe who have received lands in severalty are industriously engaged in opening farms upon their allotments. They seem to feel quite at home—say they have arrived at their journey's end, have unpacked and gone to work. It has been a frequent subject of remark that the Pottawatomies are laboring more this year, and manifesting more determination to accomplish something for themselves, than ever before.

Agent Hutchinson, in 1862 (office report for 1862, p. 109), says that the confederated Chippewa and Munsee Indians—

Have about the same amount of personal property as the Ottawas, and all live in houses and cultivate farms. There have been some indications of progress among these Indians during the past year, such as enlarging their farms and repairing and building houses.

The agent for the Kansas Indians, in speaking of the Chippewas and Munsees (office report for 1877, p. 118), states that—

These Indians have adopted the language and customs of the white race; the reside in comfortable dwellings, have finely cultivated farms and orchards, and b their industry and business capacity obtain all the necessaries and many of the lu uries of life.

The allotments of the Wyandotts were subject to the jurisdiction the state of Kansas, and they could be alienated by the reservee or h heir. The State authorities soon levied upon said lands for taxes, a the Indians were forced to sell to obtain money to satisfy the taxes, allow the white men to purchase their homes at the tax sale, and on th account they received little advantage from the assignment of their lan in severalty.

There were a few allotments made to the New York Indians, of Kan sas, but many of them were occupied by whites before the selection were completed, and the Indians were driven by force from the othe tracts in a short time. When the certificates of allotment were issue there were not a half-dozen Indians who had, or could obtain, possessio of their lands.

The Delawares were removed a few years after the assignment of thei lands in severalty. A large number of the men were soldiers in the lat war, and while in the Army they contracted bad habits, which, upo their return to the tribe, had a deleterious effect upon those who wer inclined to work, but their agents report that many of them built house and opened farms on their allotments.

Agent Adams, in his annual report for 1867 (office repo1t for 186 p. 295), says that—

The farming operations of the Kickapoos have prospered during the past year * * * That portion of the tribe who expect to remain in Kansas and become citizen of the United States are seemingly taking more interest in the schools than at first.

Agent Newlin says (office report for 1877, p. 119) that the Kickapoo have comparatively large fields and moderately good log houses, and that the allotees have developed more individually than those holding in common.

Agent Hutchinson, in speaking of the Ottawas, of Kansas (office re port for 1865, p. 333), states that " many of them are doing well, open

ing good farms, and accumulating property, but perhaps an equal number are not improving much." The agent, in 1867 (office report, p. 301), represents the number of Ottawas at 229, the number of houses owned and occupied 36, and the number of acres cultivated 650.

The condition of the Osage and Kansas Indians was very different from that of the Indians who received allotments.

Agent Snow says, in 1867 (office report, p. 324), that—

> The Osages depend on the chase for a living. They have made but little advancement in civilization. They still dress in the "blanket" and use the bow and arrow for killing the buffalo, without whose flesh and tallow they cannot subsist.

In 1868 the agent represents them as being in a very destitute condition, and says (office report, p. 271) that "had it not been for the timely aid sent them by the government in February, many must have died from starvation." Agent Montgomery says of the Kansas Indians, in 1855 (office report, p. 114), that—

> They are a poor, degraded, superstitious, thievish, indigent tribe of Indians; their tendency is downward, and, in my opinion, they must soon become extinct, and the sooner they arrive at this period the better it will be for the rest of mankind.

The efforts to establish and keep up a school among these Indians proved a failure (office reports for 1866, p. 274; 1867, p. 297; and 1869, p. 377).

There has been even greater progress among the Indians of Nebraska who received allotments than those of Kansas.

The agent for the Winnebagoes, in 1875 (office report, p. 324), reports the Indians "as progressing in industrial pursuits and advancing towards civilization and self-support," and appends statistics showing their relative progress over the two previous years.

The agent of the Santee Sioux says, in his annual report for 1879 (office report, p. 104), that—

> They have come from the small hut to good frame and log houses, and from little patches of cultivated land to large wheat and corn fields, and from the dress of the wild Indian to the full garb of a citizen, leaving off the tomahawk and scalping-knife and making use of the plow and other farming implements, working the ground the same as the white man, and many of them are now prepared to be good citizens.

In the same report (p. 108), the agent for the Omahas says of those Indians that they—

> Up to about six years ago, depended principally upon their annual buffalo hunts for subsistence. They then gave up the chase, and turned their attention to agriculture. In this short time they have made rapid progress, staying at home and taking great interest in improving their claims.

Agent Free says of the Sac and Fox Indians of Kansas and Nebraska (office report for 1878, p. 71) that "their lands being held in common, they cannot farm on a very large scale."

The agent for the Otoes and Missourias states, in regard to those Indians (office report for 1879, p. 103), that—

> Their advancement in agricultural pursuits, for which the land they occupy is well adapted, is behind that of neighboring tribes, though their progress during the past year has been greater than any previous year. * * * They seem unwilling to give up the hope that they may yet return to the free and unrestricted life of their forefathers, and fear the development of farms and improvements will prevent the realization of that hope.

The Indians of Wisconsin and Minnesota who retained their allotments, or to whom land was assigned in severalty, with proper restrictions on the power of alienation, have prospered, and are becoming good farmers and industrious people.

The cases of the Cherokees, Creeks, Choctaws, and Chickasaws have

been sighted to show that greater progress has been made by the Indians who adhere to the tenure in common than those who took their lands in severalty. These tribes hold their lands by a different tenure than that of the common Indian title. Patents have been issued to the respective tribes in fee, subject to this condition only: That the lands are not to be conveyed, except to the United States; and in case the Indians become extinct or abandon the lands, the same are to revert to the government. By tribal laws the individual Indian is made the owner and secured in the possession of any tract of land which he may have improved or purchased, either directly or through mesne conveyances, from the party who had improved the land; and hence many of the benefits proposed to be granted by the bill under consideration were secured to the members of the Cherokee, Creek, Choctaw, and Chickasaw tribes by these laws.

It is evident from the foregoing facts that the Indians must perish, depend solely upon the government for support, or make their living by farming; that the holding of lands in common retards their progress in agricultural pursuits; that the granting of land in severalty stimulates them to work, makes them self-reliant, and aids them in obtaining a practical knowledge of the laws of property; that Congress is the only body authorized to change the character of the Indian title, and that there is a great and imperative need of such legislation, the sole responsibility for which rests upon Congress.

Many of the Indians of the United States, especially those in the States of Wisconsin, Minnesota, Nebraska, and Oregon, and in Washington and Dakota Territories, are exceedingly anxious to have their lands assigned to them in severalty.

A. M. SCALES, *Chairman.*
JAS. R. WADDILL.
HENRY POEHLER.
D. C. HASKELL.
N. C. DEERING.
THAD. C. POUND.

VIEWS OF THE MINORITY.

Mr. Errett submitted the following as the views of the minority of the Committee on Indian Affairs:

The undersigned, members of the Committee on Indian Affairs of the House of Representatives, are unable to agree with the majority of the committee in reporting favorably upon this bill, for these, among other, reasons, viz:

I. The bill is confessedly in the nature of an experiment. It is formed solely upon a theory, and it has no practical basis to stand upon. For many years it has been the hobby of speculative philanthropists that the true plan to civilize the Indian was to assign him lands in severalty, and thereby make a farmer and self-sustaining citizen of him; and so far back as 1862 Congress established the policy that—

> Whenever any Indian, being a member of any band or tribe with whom the government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him.

This law stands to-day on the statute book as the recognized policy of this government of the United States in its dealings with the Indians. It does not make allotments of lands in severalty obligatory, but recognizing the plea of those who contend for the beneficent effects sure to flow from the allotment policy, it has opened the door to its establishment, allowing any Indian, in any tribe, desiring to try that policy, a full opportunity to do so under the protection of the government. That law has been upon the statute book for nearly eighteen years, and how many Indians have availed themselves of its provisions? Manifestly, very few; and yet we are told, with great pertinacity, that the Indians are strongly in favor of that policy, and will adopt it if they get a chance. It is surpassing strange, if this be true, that so few have availed themselves of the privileges opened to them by the act of 1862.

Being an experiment merely, it would seem to be the dictate of wisdom to make the trial of putting it into practice on a small basis, say with any one tribe that offers a good opportunity for trying it fairly. The Chippewa bands on Lake Superior, for instance, are alleged to be willing to enter upon the experiment. They have good agricultural lands, are partially civilized and educated, and are sufficiently removed from barbarism to give ground for hope that the experiment may succeed. There could be no very strong reason against trying the experiment merely as an experiment with them. But this bill, without any previous satisfactory test of the policy, proposes to enact a merely speculative theory into a law, and to apply the law to all the Indians, except a few civilized tribes, and to bring them all under its operation without reference to their present condition. It includes the blanket Indians with those who wear the clothing of civilized life; the wild Apaches and Navajos with the nearly civilized Chippewas; and it applies the same rule to all without regard to the wide differences in their condition. It seeks to make a farmer out of the roving and predatory Ute by the same process as would be applied to the nearly civilized Omahas and Poncas. It needs no argument to prove that these Indian tribes vary widely from each other in their civilized attainments, but this bill ignores all these variances as if they *did not exist, and* erects a Procrustean bed, upon

which it would place every Indian, stretching out those who are too short, and cutting off the heads or feet of those who are too long.

It is true that the bill leaves a great deal as to the time of putting the bill in operation to the discretion of the Secretary of the Interior; but we submit that the interests of these tribes are of too great a magnitude to be left to the discretion of any one man, even though he be a Secretary of the Interior. We know of nothing in the constitution of that department that qualifies it peculiarly for such a great trust. Secretaries of the Interior change as frequently as the occurrence of a Mexican or South American revolution; and Congress, we think, is a safer depository for such trusts than any one man, no matter what place he may hold. Let us deal with these people intelligently and wisely, and not at haphazard.

We have said that this bill has no practical basis and is a mere legislative speculation; but it may be added that the experiment it proposes *has* been partially tried, and has always resulted in failure. In the hurry of drawing up reports we cannot be expected to be very specific in our citations, but we may cite the case of the Catawbas, who had lands assigned them in severalty, and who were protected by the inalienability of their homesteads for twenty-five years, just as this bill proposes; and the result was a failure—a flat, miserable failure. The Catawbas gradually withered away under the policy, until there is not one of them left to attest the fact that they ever existed, and their lands fell a prey to the whites who surrounded them and steadily encroached upon them. They were swallowed up as thoroughly as Korah, Dathan, and Abiram, when the ground opened beneath their feet and ingulfed them. (See Hist. Mag., 1st series, vol. 5, p. 46.)

II. The plan of this bill is not, in our judgment, the way to civilize the Indian. However much we may differ with the humanitarians who are riding this hobby, we are certain that they will agree with us in the proposition that it does not make a farmer out of an Indian to give him a quarter-section of land. There are hundreds of thousands of white men, rich with the experiences of centuries of Anglo-Saxon civilization, who cannot be transformed into cultivators of the land by any such gift. Their habits unfit them for it; and how much more do the habits of the Indian, begotten of hundreds of years of wild life, unfit *him* for entering at once and peremptorily upon a life for which he has no fitness? It requires inclination, knowledge of agriculture, and training in farming life to make a successful farmer out of even white men, many of whom have failed at the trial of it, even with an inclination for it. How, then, is it expected to transform all sorts of Indians, with no fitness or inclination for farming, into successful agriculturists? Surely an act of Congress, however potent in itself, with the addition of the discretion of a Secretary of the Interior, no matter how much of a *doctrinnaire* he may be, are not sufficient to work such a miracle.

The whole training of an Indian from his birth, the whole history of the Indian race, and the entire array of Indian tradition, running back for at least four hundred years, all combine to predispose the Indian against this scheme for his improvement, devised by those who judge him exclusively from *their* standpoint instead of from *his*. From the time of the discovery of America, and for centuries probably before that, the North American Indian has been a communist. Not in the offensive sense of modern communism, but in the sense of holding property in common. The tribal system has kept bands and tribes together as families, each member of which was dependent on the other. The very idea of property in the soil was unknown to the Indian mind. In all

the Indian languages there is no word answering to the Latin *habeo*—I have or possess. They had words to denote holding, as "I have a hatchet;" but the idea of the separate possession of property by individuals is as foreign to the Indian mind as communism is to us.

This communistic idea has grown into their very being, and is an integral part of the Indian character. From our point of view this is all wrong; but it is folly to think of uprooting it, strengthened by the traditions of centuries, through the agency of a mere act of Congress, or by the establishment of a theoretical policy. The history of the world shows that it is no easy matter to change old methods of thought or force the adoption of new methods of action. The inborn conservatism of human nature tends always more strongly to the preservation of old ideas than to the establishment of new ones. The world progresses steadily, but always slowly. There are singularities in the Anglo-Saxon character and peculiarities in Anglo-Saxon belief which run back over a thousand years, and which all the enlightenment of progressive centuries has been unable to overcome. There are, even in our own land system, peculiarities which are the remnants of feudal forms and practices, and which still inhere in our methods simply from the force of habit and the conservatism of forms. And if this is true of ourselves, with a written history running back well-nigh two thousand years, why should we be so vain as to expect that the Indian can throw off in a moment, at the bidding of Congress or the Secretary of the Interior, the shackles which have bound his thoughts and action from time immemorial? In this, as in all other cases, it is the dictate of statesmanship to make haste slowly.

We are free to admit that the two civilizations, so different throughout, cannot well co-exist, or flourish together. One must, in time, give way to the other, and the weak must in the end be supplanted by the strong. But it cannot be violently wrenched out of place and cast aside. Nations cannot be made to change their habits and methods and modes of thought in a day. To bring the Indian to look at things from our standpoint is a work requiring time, patience, and the skill as well as the benign spirit of Christian statesmanship. Let us first demonstrate, on a small scale, the practibility of the plans we propose; and when we have done that, if we can do it, a persevering patience will be needed to make the policy general.

III. The theory that the Indian is a man and a citizen, able to take care of himself, possessed of the attributes of manhood in their broadest sense, and fully responsible to all the laws of our civilized life—a man like other men, and therefore to be treated exactly as other men—is embodied in the first part of this bill, which provides for giving every Indian a farm, and leaving him then to take care of himself, because, as is assumed by the framers of the bill, he *is* able to take care of himself; but having thus launched the Indian upon his future course of life, the bill turns round upon itself and, assuming that the Indian *is not* and *will not be* able to take care of himself, at once proceeds to hedge him around with provisions intended to prevent him from exercising any of the rights of a land-owner except that of working and living on his allotment. He cannot sell, mortgage, lease, or in any way alienate his land; and although he is to be under and amenable to the laws, he is to be free from taxation for all purposes. He is to be treated as a man in giving him land and exacting from him the duty of maintaining himself upon and off of it, and all this upon the plea that he is simply a man, who is to be treated as other men are; and then, as soon as we do this, we proceed to treat him as a child, an infant, *a ward in chancery*, who is unable to take care

of himself and therefore needs the protecting care of government. If he *is* able to take care of himself, all this precaution is unnecessary; if he is *not* able to take care of himself, all this effort to make him try to do it is illogical. If the Indian is a ward under the paternal care of government, he might as well hold his lands in common as in severalty. He cannot be made to feel the pride which a man feels in the ownership of property while he is made to feel that he does not possess one single attribute of separate ownership in the soil. In this respect the bill is like the old constitution of Virginia, which, when the convention which framed it put into it a clause providing a method for amending it, was said by John Randolph to bear upon its face the sardonic grin of death.

The main purpose of this bill is not to help the Indian, or solve the Indian problem, or provide a method for getting out of our Indian trouble so much as it is to provide a method for getting at the valuable Indian lands and opening them up to white settlement. The main object of the bill is in the last sections of it, not in the first. The sting of this animal is in its tail. When the Indian has got his allotments, the rest of the land is to be put up to the highest bidder, and he is to be surrounded in his allotments with a wall of fire, a cordon of white settlements which will gradually but surely hem him in, circumscribe him, and eventually crowd him out. True, the proceeds of the sale are to be invested for the Indians; but when the Indian is smothered out, as he will be under the operations of this bill, the investment will revert to the nation's Treasury, and the Indian, in the long run, will be none the better for it; for nothing can be surer than the eventual extermination of the Indian under the operation of this bill.

The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them. With that accomplished, we have securely paved the way for the extermination of the Indian races upon this part of the continent. If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse. Of all the attempts to encroach upon the Indian, this attempt to manufacture him into a white man by act of Congress and the grace of the Secretary of the Interior is the baldest, the boldest, and the most unjustifiable.

Whatever civilization has been reached by the Indian tribes has been attained under the tribal system, and not under the system proposed by this bill. The Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, all five of them barbarous tribes within the short limit of our own history as a people, have all been brought to a creditable state of advancement under the tribal system. The same may be said of the Sioux and Chippewas, and many smaller tribes. Gradually, under that system, they are working out their own deliverance, which will come in their own good time if we but leave them alone and perform our part of the many contracts we have made with them. But that we have never yet done, and it seems from this bill we will never yet do. We want their lands, and we are bound to have them. Let those take a part in despoiling them who will; for ourselves, we believe the entire policy of this bill to be wrong, ill-timed, and unstatesmanlike; and we put ourselves on record against it as about all that is now left us to do, except to vote against the bill on its final passage.

RUSSELL ERRETT.
CHAS. E. HOOKER.
T. M. GUNTER.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPO No. 15

DEFICIENCY APPROPRIATION BILL.

MAY 28, 1880.—Recommitted to the Committee on Appropriations and ordered to printed.

Mr. COBB, from the Committee on Appropriations, submitted the lowing

REPORT:

[To accompany bill H. R. 6325.]

In presenting to the House the bill making appropriations for the ann deficiencies in the appropriations for the service of the government, Committee on Appropriations herewith make the following report:

The bill is mainly based on the requirements of the letter of the Sec tary of the Treasury, of January 14, 1880, covering deficiency estima for the service of the fiscal year ending June 30, 1880, amounting $1,108,237.73, being printed Ex. Doc. No. 24 of the present session, a upon the letter of the Secretary of the Treasury of January 16, 18 transmitting, in compliance with section 4 of the act of June 14, 18 schedules of claims certified to be due by certain accounting officers the government, amounting to $804,561.82 (printed House Ex. Doc. present session.) Also upon various matters from the dockets of committee, being deficiency requisitions from various departmen among them letters from the Attorney-General calling for $791, for expenses of courts of the United States for the years 1878, 18 and 1880; from the Postmaster-General, amounting to $392,000, deficiency in the postal service; for an advance appropriation to Cherokee Indians, $500,000; for the Miami Indians of Indiana, un treaty stipulations, $223,257.86; under letters of the Secretary of Treasury for repayment to importers for excess of duties, or ot moneys paid under protest, $200,000; under letter of Secretary ask money to pay "charges and commissions cases," $100,000, and un various other requisitions of less amount, which will probably, in aggregate, amount to more than five millions of dollars. The to amount recommended by the bill is $4,302,380.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1578.

SURVEY OF LAKES UNION AND WASHINGTON FOR SHIP-CANAL TO ELLIOTT BAY.

JUNE 2, 1880.—Laid on the table and ordered to be printed.

Mr. WILSON, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing, to whom was referred a resolution to print 1,000 copies of Lieutenant-Colonel Alexander's survey of Lakes Union and Washington for a ship-canal from the latter lake to Elliott Bay, have considered the same, and report thereon that they can see no good reason for publishing the report. They, therefore, report back the resolution adversely, and ask to be discharged from the further consideration of the subject.

CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
! Session. } { No. 1579.

RINTING MEDICAL AND SURGICAL HISTORY OF THE WAR.

JUNE 2, 1880.—Laid on the table and ordered to be printed.

VILSON, from the Committee on Printing, submitted the following

REPORT:

e Committee on Printing, to whom was referred the resolution upon ıbject of printing extra copies of the Medical and Surgical History e War, report that in view of the reasons contained in the letter ırgeon-General Barnes, the Committee on Printing deem it inexpe- at this time to order such printing, and for this reason report back esolution with an adverse recommendation.

WAR DEPARTMENT,
SURGEON GENERAL'S OFFICE,
Washington, D. C., February 9, 1880.

O. R. SINGLETON,
Chairman Joint Committee on Public Printing,
House of Representatives:

: I have the honor to request your attention to S. R. 77, introduced Senate yesterday and referred to the Committee on Printing, di- ıg another edition of 10,000 copies of the Medical and Surgical ry of the War to be printed.

passage of this resolution would have a very disastrous effect on ɔmpletion of the edition now in hand, as it would delay it for years, til all the illustrations for the four volumes already published are duced by the artists now engaged upon those for the last two vol-

ere are but a limited number of chromo-lithographers educated to logical illustrations; the original edition has already been delayed ears by its increase from 5,000 to 10,000, after the two first volumes published. The two editions of 10,000 each cannot possibly go on y side, the stones will not print more than a certain number of ssions; reproduction is as tedious and expensive as the originals, killed labor in this art not available beyond the present supply. ld even another edition of the work be authorized, it ought not to ɔne until that now in hand is completed, and when so authorized and shed, it should only be distributed in full sets of the six volumes. present the immense demand for the Medical and Surgical History in part from the fact that those who received the first and second ıes did not receive the third and fourth, while many received these , who did not possess the former ones, both classes now appealing ir Senators and Representatives to complete their sets.

The distribution of the quota allotted to this office h
medical officers of the Army and Navy, libraries, college
of learning, permanent hospitals, and contributors to t
thus secured full sets, and putting it within reach of thos
fession who are teachers and authors. Recent editions
surgery, at home and abroad, have drawn very largely u
cal and Surgical History, both in text, data, and illustrati
completed, its array of facts will become generally ava
being made the basis of systems of medicine and surgery
of the student.

Very respectfully, your obedient servant,

JOS. K. BAR
Surg

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1580.

COMPLETION OF A SOUTHERN PACIFIC RAILROAD AND TELEGRAPH LINE.

JUNE 3, 1880.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. ELLIS, from the Committee on the Pacific Railroad, submitted the following

REPORT:

[To accompany bill H. R. 6367.]

The bill under consideration proposes that the Government of the United States shall aid the completion of a Southern Pacific Railroad by a loan of $10,000 per mile to build the uncompleted line between San Antonio and El Paso, between San Antonio and Eagle Pass, or Laredo, and between Jefferson, Tex., and a point on the Mississippi River opposite the city of Memphis, Tenn.

ELIGIBILITY OF THE PROPOSED ROUTE.

The establishment of rail communication with the Pacific Ocean, on or about the line of the 32d parallel, has long been a subject of interest to the American people, and especially to the citizens of the Southern States. The route of that parallel was one of the earliest, if not the earliest, of the routes authorized by Congress to be surveyed; and its eligibility having thus been demonstrated, there has been no time in the history of the country for two decades when it has not commanded a large measure of popular support, as well as the support of the government.

The verification of this statement may be found in the repeated resolutions of commercial and political conventions during recent years, in the speeches of the most eminent of our political men of both political parties, in the columns of the newspaper press, and even in the action of Congress itself, pledging the consummation of such an enterprise as one not merely of commercial importance, but of sectional good-will and inter-State comity.

The original policy of the government contemplated four distinct transcontinental lines, of which that of the 32d parallel may be considered as having had preference, and the one which would have been first constructed but for circumstances antecedent to the civil war and the exigencies to which the war gave rise. The line of the Union and Central Pacific, long since completed under the requirement of the country in time of war; the line of the Northern Pacific, and that of the Atlantic and Pacific on the 35th parallel—these, together with the line of the 32d parallel, constitute the four great enterprises by which all sections of the country were to be afforded equal facilities for transcon-

tinental communication and equal opportunities of local development as a consequence thereof. Happily the times are such, and such the growth of the country in its western and northwestern sections that the promoters of the 32d parallel line alone find it necessary to solicit government aid for its construction; not in its entire extent, however, but only through that section of the country which, by reason of its exposed, sterile, and unpopulated condition, offers no inducement to private capital at the present time for the inauguration and prosecution of so great a work.

True it is that individual energy and enterprise will not shrink from the task should the government turn a deaf ear to the request for aid of that section of the country most deeply interested, and which feels itself justly entitled to ask therefor upon the principles of reciprocal justice but such a work will necessarily progress slowly and await for its consummation the remote period of the establishment of civilized settlements upon our southwestern border, when such an enterprise would present a remunerative prospect to private investment.

There are considerations, however, both local and national in their character, which would seem to discredit such a policy and to invite the Congress of the United States to look favorably upon the measure now presented, which contemplates the immediate completion of the line in question, by the bestowal of aid to so limited an amount that, in view of the bounty of the government to other enterprises, it is of comparative unimportance; the more especially when the countervailing advantages of the government are considered. Nay, it is neither subsidy nor donation that is asked by the people of the South, but that by contract in advance the government shall provide for the construction of the line proposed, and reimburse itself not only by an offset of its own transportation expenses, but by diminishing the cost of its military, postal and revenue service to an amount fully equal to that for which it will become liable for the construction of the roads in question within the period prescribed.

Be it observed that the whole amount of aid asked from the government in the present case will not exceed, at the rate of $10,000 per mile the maximum sum of $7,500,000; whereof $6,500,000 will be charged to the construction of the line between San Antonio and El Paso, and the balance to the construction of the branch to Laredo on the Rio Grande.

FEATURES OF THE PROPOSED BILL.

By the terms of the accompanying bill, provision is made primarily for the construction of the Galveston, Harrisburg and San Antonio Railroad, now having its western terminus at San Antonio, from said city of San Antonio, via Fort Clark, to a point on the Rio Grande, "at or near El Paso," there to meet the line of the Southern Pacific Railroad of California, now in course of construction to that point. A branch of said line is provided for, to extend from a point on the said main line, which is to be known as the Mexican and Pacific Extension of the Galveston, Harrisburg and San Antonio Railroad, to a point on the Rio Grande at or near Laredo.

To each of these lines the aid of the government is to be extended to the amount of $10,000 per mile, as the same shall be completed to the satisfaction of the Secretary of War, upon the report of a competent engineer, designated by him to examine and report upon the same. And the said advances of money are made by the United States upon the express condition that they shall be repaid to the Treasurer of the

United States in the manner and within the time therein specified, together with 4 per cent. interest per annum thereon. That is to say, that each of the said companies so receiving aid from the government of the United States shall be obliged at all times to transport supplies, munitions, and materials of war, the United States mails, and do all manner of railroad and telegraph service that the Government of the United States may require over those portions of the lines of their roads constructed under the provisions of this act, at such fair and reasonable rates of compensation for said government service as may be agreed upon and adjusted by the Secretary of War, the Postmaster-General, and the Secretary of the Interior, for their respective departments, in conjunction with the proper officers of the said companies, respectively, not to exceed the amount paid by private parties for similar services.

The customary guarantees are included in the bill, providing that at all times the government shall have preference in the use of the said roads and that the obligations to the government shall be a lien against the said companies until all advances of moneys are paid, it being stipulated that if the sums advanced by the government, together with 4 per cent. interest per annum thereon shall not have been paid at the expiration of 20 years, then the accounts between the government and said railroads, respectively, shall be stated and adjusted under the direction of the Secretary of the Treasury in the manner therein prescribed.

Still other provisions intended to protect the public and to secure unity of administration in the several connecting lines have not been omitted, as reference to the bill will show.

By section 5 of the bill the right of way is granted to the Southern Pacific Railroad Company, of California, through Arizona and New Mexico, to give nationality of character to the great transcontinental railway about to be established. And provision is made therein that in case of the failure either of the said Southern Pacific Railroad Company or the said Galveston, Harrisburgh and San Antonio Railway Company to build a continuous line between its present terminus and the said point on the Rio Grande at or near El Paso within the time prescribed, said company so making default shall yield all its rights, privileges, and titles to the other company, who shall have the right to prosecute the work until a connection between the two lines shall be made.

It is believed the wisdom and sound policy of giving national sanction to the line of the Southern Pacific Railway in the Territories will not fail to be recognized; the more especially as no request for aid is presented by that corporation either in bonds or lands.

Hitherto that line has been constructed under local charters of the Territorial governments of Arizona and New Mexico, respectively, a general statute of the United States having granted the right of way. While the Texas Pacific corporation has for nine years held the franchises and a liberal land grant along this route without completing a mile of the road, the Southern Pacific Company, building from California east, without any aid whatever, has been steadily prosecuting the work of construction of its road to the present time. Having surmounted railway obstacles of unparalleled magnitude, it has progressed so far in the execution of its enterprise that track is now being laid eastwardly from Tucson, and there is little doubt that in the year now current the line will be completed to its terminal point at El Paso.

It will thus be seen that with the completion of the line from San Antonio to El Paso continuous rail communication will have been established between the Gulf of Mexico, both at Galveston and New Orleans, and the ports of the Pacific Ocean. For it is to be understood that that

section of the line between Orange, in the State of Texas, and Vermillionville, in Louisiana, which alone interrupted the through connection, is now at the point of completion, so that trains will be running at an early day from New Orleans to San Antonio.

NEW ORLEANS THE TRUE TERMINUS OF A SOUTHERN PACIFIC RAILWAY.

There can be no doubt that New Orleans is the true terminus of a Southern Pacific Railway. This coigne of vantage can but be conceded to her in view of her position as mistress of the Mississippi, her railway connections with the other cities of the South, both inland and seaboard, and of the fact that the shortest line in American territory between the two oceans must needs have its terminus upon the Gulf. It is difficult to exaggerate her commercial importance when we contemplate New Orleans in the light of the completion of this transcontinental line, and of the work now in progress, for which Congress has made ample provision, looking to the improvement of the Mississippi River, to say nothing of the benefits she will secure from the railway across the Isthmus of Tehuantepec, now in course of construction.

It is at New Orleans and Galveston that the wheat and other staples of the Pacific coast are destined to find shipment, and there too will be received for distribution the immense freights of merchandise intended for the supply of the valley of the Lower Mississippi, Western Texas, New Mexico, Arizona, and Southern California. Her position is such that the great volume of the foreign commerce of the countries lying south of the United States, aggregating in amount $520,000,000, can but stimulate her commercial activity as being a placer of wealth which is legitimately hers. Furthermore, with the great staples of the mid-continent finding shipment at her port, and all the imports of that vast region, together with those of the Lower Mississippi Valley, seeking entry there; with a command of the Pacific trade, by the aid of the Tehuantepec Railway, not enjoyed by any other city upon the continent; with all these advantages, and with the assured success of Captain Eads's enterprise, affording a harborage for ships of the largest class, there would seem to be nothing which can forestall or hinder the imperial supremacy, as a commercial mart, of New Orleans.

It will thus be seen that by the completion of the transcontinental line now intended, there is no requirement of the Southern States which will not be fully complied with. It will be what no other of the projected enterprises pressed upon the attention of Congress can claim to be, a Southern Pacific road in fact as well as in name, traversing, as it will, with its main line and its connections, all sections of the Southern country, and giving to all of them transcontinental facilities.

Such are the considerations which present themselves in favor of the line of railway proposed in the accompanying bill, as contemplated in its geographical relations and in view of the requirements of a just and equal polity between the North and South. But it is rather in its national and international aspects that the measure under discussion deserves recognition by the country and the prompt and favorable action of Congress.

MILITARY ADVANTAGES OF PROPOSED RAILWAY.

First of all, the military exigencies of the government are such that the completion of a railway line along the disturbed regions of the Rio Grande border, thereby to facilitate the movement of our troops and the

ransportation of military supplies, has become a matter of paramount ecessity. Not to urge those civilizing influences which uniformly at- nd the progress of the railway, it is enough to suggest that in its mere nancial aspects such a policy as is now proposed for adoption by the overnment will not fail to justify itself in its economical results.

Writing upon this subject, in a communication of March 4, 1880, addressed to Hon. B. F. Jonas, chairman sub-Committee on Railroads, nited States Senate, General Sherman says:

San Antonio has been for years and still is the military depot of quartermaster, ommissary, and ordnance stores, and for this reason we prefer to supply and defend ie Rio Grande frontier from that point.

To the same purport are the views of Quartermaster-General Meigs, s expressed in a communication addressed to Hon. C. M. Shelley, chairan of the sub-Committee on Railways and Canals of the House of Repesentatives. He says:

San Antonio is the natural depot of supplies for troops acting on the Rio Grande ontier, above the head of navigation, which is at Ringgold Barracks, opposite to ie Mexican city of Camargo. * * * The place for collection and outfit of troops ntended to operate against Mexico would be San Antonio.

In the foregoing communications both General Meigs and General herman were discussing the relative merits of a proposed broad-gauge ne between San Antonio and Laredo, and the narrow-gauge line now in ourse of construction from Corpus Christi to Laredo; and in each stance preference was expressed for the San Antonio connection and road of standard gauge.

With a line such as is now proposed, connecting San Antonio with e coast at Galveston and New Orleans, at Houston with the Northern ilway system, and pursuing, by way of Fort Clark, the very line of r frontier not only through Texas but through New Mexico and Arina, there can be no overestimate of the military advantages which ll thus be secured by the government, or of the assured reduction year year of the military expenditures.

Mr. Spofford, the attorney of the Galveston, Harrisburg and San Anio Railroad Company, discussing the relative military merits of the e proposed and that of the Texas Pacific, presents the superiority of e San Antonio line as follows:

The Texas and Pacific line plays no part in this relation, vital as it is to the public inest and to the dignity of the government. The projected route of that road touches Rio Grande only at El Paso near the southern boundary of New Mexico, a point distant from the exposed regions of the frontier, now, and probably for years to ie, to be the theater of military operations, and where in view of this fact Congress already provided for an additional number of Army posts. On the other hand, the from San Antonio is of the highest military importance, pursuing in its projected te along its whole course the flexure of the Rio Grande in immediate proximity our military posts, itself constituting, to quote an expressive phrase, "a military ress and highway" for its entire length. It is safe to say, predicating the asser- not upon mere surmise but upon actual data, that the amount asked in the proed contract with the War Department will have been saved to the government hin the period of time prescribed for its completion.

OMMERCIAL BENEFITS TO BE DERIVED FROM CONSTRUCTION OF PROPOSED RAILWAY.

The commercial advantages of the proposed line are so apparent that ey require but brief space for their presentation. With the cordial ations now subsisting between the Republic of Mexico and the United tes, and under a liberal policy to become more and more intimate, s confidently believed that the international exchanges of the two

countries will be largely augmented at no distant day. Already, with the establishment of rail communication to San Antonio, we have an earnest in the increase of our trade with Northern Mexico of what may be expected with more ample facilities of inter-communication between the two countries.

When we reflect that the staples of Mexico, our next door neighbor are those of which we as a people stand in need, and which are supplied to us in large part at the present time from distant regions of the globe while Mexico requires the products of our manufacturing and mechanical skill, it is a commercial anomaly to find that in a total commerce with that country which has averaged of late years about $18,000,000 yearly our exports have amounted to only one-third that sum.

That anomaly becomes still more inexplicable when it is observed that the imports of Mexico from European countries are usually of such commodities and merchandise as are produced in the United States, and at a cost, too, which has enabled us of recent years to contest with the foreigner for a share of his trade, even in his own markets.

We may, if we will, increase our trade with Mexico to an immense extent, the initial step in that direction being the establishment of rail communication along the border. Why, it may pertinently be asked, shall we traverse near and remote seas for the fruits, the hides, and wool; the coffee and sugar; the fibers, spices, and gums which are indigenous products of Mexico, and which she will doubtless be glad to exchange with us for our manufactured goods and the varied product of our mechanical and inventive skill? Looking to the extent of her resources, both agricultural and mineral, and their capacity for development, we may reasonably expect in making the trade of Mexico tributary to our own—complementary as one is of the other—such a realization of commercial wealth as will not suffer by comparison even with that which the people of Great Britain have so long enjoyed in their East India possessions.

The present Speaker of the House of Representatives, Hon. S. J. Randall, in a letter to the citizens of Galveston, of date May 25, 1877, did but anticipate the favorable condition of things which has now arrived in our relations with Mexico when he wrote as follows:

> The time has come, in my opinion, when the policy of the government should be to enlarge our trade relations with Mexico and with the Central and South American States. It is well for us to study the statistics of the trade between these countries and the markets of the world, from which we find that the people of the United States are not receiving a due share of the commerce of the countries I have named. We need more favorable commercial relations and more comprehensive trade connections with other nations. Let me cite a few figures to prove the truthfulness of my assertion. The public documents show the foreign commerce of the countries lying south of the United States on the American Continent to be about $520,000,000. Our share of this amount is about $112,000,000, of which only about $37,000,000 is transported in American vessels and under the American flag. Such a statement should at once arouse our people from their lethargy. The war stimulated the manufacturing facilities of the North enormously, and only by the adoption of such a policy can we keep up the activity of our manufacturing districts and secure a market for our productions. It is a discredit to our enlightenment that we, as a people, stand quietly by and do not make sufficient endeavor to increase our meager share of this important trade. When the extended policy to which I have referred is inaugurated, as it must and will be, then will your city, your State, and the entire coast of the Gulf receive the advantages which nature has bespoken for them.

These are the matured views of a statesman, in whose appreciative mind the economical interests of the country are considered as secondary only to those high political rights and obligations which are at once the source and the bulwark of our beneficent constitutional system.

Views of a similar character, enforced with a great variety of illustrative data, are to be found in the late work of Alexander D. Anderson

esq., entitled "The Silver Country, or the Great Southwest," from which the following extract is made:

Of the $10,531,970 worth of cotton stuffs purchased by Mexico during the year from June 30, 1872, to June 30, 1873, the United States supplied from her own products and manufacture only the following insignificant amount in value, viz:

Unmanufactured cotton	$74,352
Manufactured cotton (colored)	66,185
Manufactured cotton (uncolored)	155,657
All other cotton stuffs	73,244
Total value	369,438

Yet the United States can successfully and profitably compete with every nation on earth in both the production and manufacture of cotton.

Not only were cotton stuffs the chief item of Mexico's purchases for the above-mentioned year, but they have constituted the chief item of her imports every other year of the present generation. It follows, then, that there is some other than a natural barrier to our supplying her chief demands.

Quicksilver is another item of Mexico's imports, her purchases of that commodity in 1873 being in value $2,184,014, yet but a small portion of it was purchased from the United States, notwithstanding the fact that the part of this country where it is produced in great profusion is the portion nearest to Mexico.

We have already observed that coffee and sugar are products peculiarly adapted to the soil and climate of Mexico. Our demand for these products is so great that the United States imports each year over fifty million dollars' worth of coffee, and during the last three years the annual average value of our imports of sugar and molasses has been upwards of eighty-one million dollars, yet Mexico supplies but a small fraction of this demand.

There remains to be considered, in a general view of the subject-matter, what may be called the international relations of the proposed line of railway. It was expected that, with the establishment of transcontinental communication by the construction of the Union and Central Pacific Railways, a marked impetus would be given to our eastern trade, and especially to that with China and Japan, the more especially as the commercial energies of the Pacific coast would not fail to be employed to that end. In this, however, the popular expectation and that of the government has failed to be realized, as is shown by the comparative unimportance of the international exchanges effected by the lines in question.

With a route shorter in distance between ocean and ocean, as will be the proposed Southern Pacific, by more than a thousand miles, and not subject as is the existing line to climatic obstacles, it is believed that the expectations of those who so earnestly favored communication with the Pacific as a means of promoting our foreign trade, as well as the local development of the country along its route, will at length be realized. This result must of necessity follow if economy of space and time, coupled with economy in cost of railway operation, are the criteria of success in the development of commerce between the East and West. It is along this pathway that the future beckons the country to fields of commercial activity as yet wholly undeveloped. With their cultivation and enjoyment we shall witness, too, other results of the highest national importance, both in the development of our agricultural, pastoral, and mineral wealth and in the rapid growth of towns and cities rivaling those of the Atlantic and the West, where now, in capacious valleys and auriferous sierras, Texas and California, New Mexico and Arizona, hold in reserve their incalculable treasures.

For these reasons, both general and special, your committee have the honor to report the accompanying substitute for H. R. No. 500, and recommend its passage.

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1581.

STOVER COLLEGE.

NE 3, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

r. HULL, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 6368.]

he Committee on the Public Lands, to whom was referred the bill H. R. 4867, *having considered the same, with the accompanying papers, submit the following report:*

By an act of Congress, dated the 15th of December, 1868, a small lot ground, with buildings thereon, was granted to Stover College, at arper's Ferry, West Virginia, and the title to said property was, by ed, conveyed by the Secretary of War to trustees for said college on e 15th of December, 1869. The lot of ground so conveyed is too cir- nscribed for the purposes of the college, as all institutions of learning ould have sufficient grounds for a campus. The college authorities and ne of the citizens of Jefferson County have asked that the several lots ground hereinafter specified be granted to said Stover College for the pose of enlarging its grounds and increasing its comfort, convenience, l facilities. By a letter addressed to Hon. B. F. Martin by General nét, Chief of Ordnance, and letter of the Secretary of War, it will be n that they concur in the opinion that there is no objection to the nt of about three acres of land for the purposes of said college. Gen- l Benét estimates the average value of the lots at about $70 per lot, ng of little value to the government, and yet almost invaluable to college. The lots of ground are situated on the hill some distance n the town of Harper's Ferry, and although they have been in the ket for many years, but few lots in that locality have been sold for lding or other purposes. Said lots are remote from the water-power . in no manner connected therewith, so that the grant to the college not impair the value of the water-power to any extent whatever.

he bill grants about ten acres, but since it was offered and referred the committee the college authorities came to the conclusion that ut three acres would perhaps enlarge their grounds sufficiently for actual necessities of the college, and by resolution ask that, instead the ten acres, they be granted about three acres, comprising the owing lots and parts of lots, to wit, lots 6, 7, and 8, block H H, and 3, 7, and 9 in block M M, all on Camp Hill, and lots 1, 2, 3, and 4 block H on Shenandoah street, and so much of lots 7 and 8 on She- ndoah street as lies north of a line from and continuous with the south of lots 2 and 4 in block H to McDowell street, altogether contain- about three acres.

Stover College is the only institution of learning in West V
Maryland, or Virginia where the freedmen or colored people
provided with a collegiate education. From a small beginnin
steadily grown in interest, power, influence, and number of s
until now it has over 200 students, which makes it necessary to
its buildings and provide for its increasing patronage. As it
enrich the government to retain said lots, nor impoverish it to gi
and will be a great benefit to the college in promoting its usefu
reason of the additional facilities it will afford, your committ
the opinion that the grant of said lots and parts of lots should
to the said college, and therefore recommend the passage of th
panying bill as a substitute for the original bill.

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1582.

CHARGES AGAINST HON. J. H. ACKLEN.

JUNE 3, 1880.—Laid on the table and ordered to be printed.

. KNOTT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany Mis. Doc. No. 45.]

The Committee on the Judiciary, in pursuance of the resolution rering to it the report of the Committee on Foreign Affairs, touching tain charges against Hon. J. H. Acklen, with instructions to make ther investigation thereof if necessary, and report what action, if , the House should take thereon, having had the same under coneration, would respectfully submit the following, together with the timony taken in relation thereto:

On the 6th day of February, 1879, the Committee on Foreign Affairs, ough Mr. Acklen, submitted to the House a report in reference to memorials of Woolsey Teller and Eliza Livingston, praying redress certain injuries alleged to have been suffered by them respectively ough the action of the Government of Nicaragua, which was recomted to that Committee, and printed as "Report No. 96, House of presentatives, Forty-fifth Congress, third session."

o further action having been taken thereon, Mr. Acklen, early in the session of the present Congress, had the memorials of the claimants, er and Livingston referred, to the Committee on Foreign Affairs ough the petition-box in the usual manner, and also introduced the House a resolution relating to the same subject, which, on the of June, 1879, was referred to the Committee of the Whole House placed on the public calendar.

he memorials having in the mean time been referred to Mr. King, of isiana, as a subcommittee of the Committee on Foreign Affairs, Acklen caused his clerk to prepare a paper in the form of a report e submitted by Mr. King to that committee, embodying a printed y of the Report No. 96, Forty-fifth Congress, above mentioned, ch he handed to Mr. King, who, some time in the following Decem- returned it to Mr. Acklen at his request.

the Congressional Record of January 14, 1880, Mr. Acklen was re:ed as having used the following language in the House on the preng day:

sk unanimous consent that the report of the Committee on Foreign Affairs in re- n to the claims of certain citizens against the Government of Nicaragua be re- d to the Committee of the Whole House and printed.

nd a paper purporting to have been submitted by Mr. King, as such port, was subsequently printed as "No. 86, House of Representa-s, Forty-sixth Congress, second session," although neither the Comtee on Foreign Affairs nor Mr. King had authorized any such report e made.

his *fact having been called to* Mr. Acklen's attention by Mr. King,

the following statement, with the consent of Mr. Acklen, appeared i the Congressional Record of January 21, 1880, as having been made b him on the floor of the House on the preceding day:

Mr. ACKLEN. On January the 13th instant, during the absence of my colleague Mr. King, I asked unanimous consent of the House to have printed a manuscript des ignated "Report No. 86, House of Representatives, Forty-sixth Congress, second ses sion," which I had myself prepared and placed in his hands, and which he had sub sequently returned to me at my request. I ask that it be withdrawn, as it wa submitted by me without authority from Mr. King or from the Committee on Foreig Affairs, it having taken no action on the matter. This was done through a mistak of mine.

The minute of Mr. Acklen's remarks on that occasion as made by Mr Lord, the reporter on duty at the time, being as follows:

I ask consent to withdraw the report No. 86, which, during the absence of my co league, I asked to have printed, presuming that the manuscript of the report and th bill which he had left with me had been acted upon by the committee. As it wa solely my error, I ask that it be withdrawn.

The facts thus stated suggest the only question which your committe has been called upon to determine, namely: Was it the intention of Mr Acklen when he submitted his request to the House, on the 13th o January, to procure, under a pretended authority from Mr. King, o otherwise, the printing of a document as a report from the Committe on Foreign Affairs, when in fact that committee had not agreed to an such report, or authorized the same to be made?

His own statements, made under oath, in explanation of the matte may be substantially summarized as follows: That, having been place in charge of the subject while a member of the Forty-fifth Congress having made a report in relation to it in which he took some pride; hav ing been prevented by sickness from securing action upon it in th House; naturally feeling an interest in it as he would in any other bus ness intrusted to him, and actuated perhaps by a sort of ambition to b made chairman of a select committee which might give him some poli ical prominence, but with no personal interest in the subject-matte whatever, he introduced the resolution which had been agreed upon b the Committee on Foreign Affairs in the Forty-fifth Congress durin the "morning hour," and finding it improbable that the resolution coul be gotten out of the "morning hour" during the extra session, he had i together with the papers relating to it, referred, through the petitio box, to the Committee on Foreign Affairs, where it was referred to Mr King as a subcommittee; that on the 30th of June the resolution wa placed on the public calendar, but that in the mean time he had cause his clerk to prepare a report, embodying a copy of his printed repor made to the preceding Congress, which he handed to Mr. King, an which shows upon its face that it was intended as a report to be sub mitted by Mr. King to the committee; that the resolution having bee referred to the Committee of the Whole and placed on the calendar, an therefore having no further interest in having it reported from the Com mittee on Foreign Affairs, he, some time in December last, requested Mr King to return him the report, which he did; that he threw it with othe papers in his desk, with no other intention with regard to it than merel to use it as a convenience in his argument on the resolution in case i should be reached; that on the morning of the 13th of January, appre hending that the resolution was liable to be called up at any time whe the House might go into Committee of the Whole, he sent a page to th document room for a number of copies of his old report, who returne with the information that the edition had been exhausted; that his im pulse at once was to have its place supplied, and, without really thinkin

y that even that thought occurred to him; that the intention
ring it printed as a report from the Committee on Foreign
s was entirely foreign to his thoughts and never entered his mind;
e did not know at the time that Mr. King's name was on the
at all, and did not see the document printed as report No. 86, or
nark attributed to him in the Record of January 14, until his at-
n was called to them by Mr. King; that the statement which ap-
n the Record of January 21 as having been made by him was
ed by Mr. King; that he desired and offered to add to it a fuller
ation of the manner in which the mistake had occurred, but that
ng objected to any alteration or addition being made thereto, as-
him that the Committee on Foreign Affairs desired it to be just
ay; that feeling that he had unintentionally placed them in a
osition, and being willing and anxious to do anything that would
te his colleague, Mr. King, fully and forever, and not anticipat-
y future attack or trouble with regard to the matter, or that he
be charged with having attempted to make a report from the
ttee on Foreign Affairs, he was not even ordinarily guarded in
ion, but took the statement as it had been prepared by Mr. King,
he understood was insisted upon by the Committee on Foreign
; that having agreed with Mr. King that this statement should
in the Record as his own, he was not careful as to the language
y him in asking that the paper designated as Report No. 86
be withdrawn, but thinks that the minute made by Mr. Lord of his
at that time does not correctly represent what he actually said,
he could not say positively whether Mr. Lord had taken down
act words used by him or not, as he was at the time holding in
nd the written statement prepared by Mr. King, and which he
ed to have printed in the Record in lieu of what he was then say-
d did immediately hand to the reporter for that purpose, and
re was neither careful nor particular as to his exact words, but
he did use the words attributed to him, namely, "Presuming that
nuscript of the report and bill which he had left with me had
cted upon by the committee," he could only have meant that the

allowed in the examination of each of them, and, deeming it unnecessary to incumber this report by referring to the large mass of totally irrelevant statements thus naturally elicited, it is the opinion of your committee that the foregoing summary of facts, as stated by Mr. Acklen, is not only consistent with reason, but corroborated by the evidence herewith submitted.

Harry Blacklock testifies that he was sent by Mr. Acklen to the document-room for his report; was informed by the clerk that the edition was exhausted; and that he immediately returned and informed Mr. Acklen of that fact. And Mr. Brown, the official reporter on duty when Mr. Acklen made his request on the 15th of January, says that at the time there was a pressure of requests for unanimous consent, and considerable confusion on the floor, and that business was being transacted hurriedly; that the minute actually made by him of Mr. Acklen's remark at the time was: "I ask to have a report printed in a couple of cases already on the public calendar," which, not being sufficient to enable him to make an intelligent report, he consulted the paper submitted by Mr. Acklen, and from it made up the version of Mr. Acklen's request, as it appeared in the Record of January 14; that Mr. Acklen's seat was somewhat remote from the reporters' desk; and that in consequence of the confusion and rush of business at the time other language might have been used by Mr. Acklen which escaped him. Mr. Hostetler, who occupies a seat very near Mr. Acklen's, states that Mr. Acklen asked to have a report, which was made or had been prepared for the last Congress, "printed" or "reprinted"; he could not say positively which; but that the idea of having a report which had been prepared for a former Congress printed in the Record of the present Congress struck him as singular, and thus made an impression upon his memory. And Mr. Bicknell says that his attention was attracted to Mr. Acklen's remark by hearing the words Committee on Foreign Affairs, which, as he was himself a member of that committee, caused him to take some interest in the matter at the time; but he could remember nothing further of what was said.

These statements taken together would seem to indicate that the whole of Mr. Acklen's remark when he made his request was not heard by Mr. Brown, and that he not only referred to his own report in a former Congress, but referred to it as a report which had been made from the Committee on Foreign Affairs, and it is probable that had all he said on that occasion been clearly understood and accurately reported, or if he had been more careful in the hurried interview which soon afterward occurred between himself and the journal clerk, much if not the whole of the difficulty which subsequently ensued with regard to the matter might have been obviated.

It is in evidence, moreover, that several members of the Committee on Foreign Affairs were on the floor at the time, and the idea that any sane man would rise in their presence and boldly attempt to palm off or ask to have printed as their report a paper to which they had never agreed when any or all of them might have instantly confronted him with a denial of its authenticity and exposed the falsehood in the face of the House and the country, seems to your committee too preposterous to be entertained for a moment, and it is equally incredible, without the most convincing proof, that such an attempt could have been made even had every member of the committee been absent at the time, for it must have been obvious to any rational mind that a paper thus surreptitiously published as the report of a committee could not possibly have been used or referred to as such without leading to the exposure of the fraud and the inevitable disgrace of its perpetrator.

Nor have your committee been able to discover in the evidence the slightest trace of any rational motive which could have tempted Mr. Acklen to a proceeding so unnecessary in itself, and so hazardous to his own reputation either for personal integrity or common sense. Mr. Acklen not only denies it upon his oath, but a patient and careful examination of every available source of information has failed to show that he ever had the slightest pecuniary interest in any claim whatever against the Government of Nicaragua, or that he ever saw or communicated in any manner with any person, either directly or indirectly, in any such claim. But, supposing him to have had a direct pecuniary interest in the success of the resolution he had proposed, as a rational being he could not have hoped to promote its success by a fatuous attempt to palm upon the House a false report.

A young man, but recently embarked on public life, he may have been and no doubt was inspired to some extent in the advocacy of his resolution in reference to the alleged claims against the Government of Nicaragua by an ambition to achieve for himself some little distinction as the head of a select committee charged with the investigation of questions of more or less international interest and importance; but, as a sensible man, he could scarcely be supposed to have deliberately intended to practice an unnecessary and disgraceful fraud, the natural and inevitable effect of which would be not only to defeat the very object he had in view, but insure his own political ruin and personal degradation.

In view, therefore, of all the pertinent facts and circumstances disclosed by the evidence herewith submitted, it is the opinion of your committee that it was not the intention of Mr. Acklen, in making his request on the 13th of January last, to have the document referred to by him printed or imposed upon the House as a report from the present Committee on Foreign Affairs, but that the printing thereof as "Report No. 86, House of Representatives, Forty-sixth Congress, second session," was merely the result of a want of proper care on his part.

Your committee would therefore respectfully recommend that the matter be laid on the table and no further action taken therein.

CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1583.

EIGHT-HOUR LAW.

3, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

ARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bills H. R. 364 and 5996.]

ur committee having had under consideration the bill H. R. 364 he proposed substitute therefor, viz, the bill H. R. 5996 and the accom- ing report, No. 1267, heretofore reported to the House and recom- d, beg leave to report the same back to the House without recom- lation, other than that said bill and substitute be referred to the priate calendars for such action as the House may see fit to take on.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1584.

ALBERT H. EMERY.

JUNE 3, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6373.]

The Committee on Claims, to whom was referred the bill (H. R. 5990) for the relief of A. H. Emery, have considered the same, and respectfully report:

By an act approved March 3, 1873, Congress appropriated $25,000 for improved machinery for testing American iron and steel (17 Stat. at Large, p. 547). Under this appropriation the Ordnance Department ordered of A. H. Emery, civil engineer, of New York, a testing machine to be designed and built by him, and erected at the Watertown Arsenal, Mass., as will more fully appear from the memorial of the claimant accompanying the message of the President to the House on the 16th of April, 1880. (See Ex. Doc. No. 74.)

2. The papers contained in said Ex. Doc. No. 74 show that under this order the claimant diligently and continuously proceeded with the designing and construction of the said machine. During the progress of this work Congress passed an act, approved March 3, 1875 (18 Stat., p. 399), appropriating $50,000 for "experiments in testing iron and steel, *including the cost of any machine built for the purpose*," and the above appropriation of $25,000 made by the act of March 3, 1873, was made available as a "further sum" for the purpose of building such machine. (See section 4.) This section also provided that the President should appoint a board consisting of one engineer and one ordnance officer of the Army, one line officer and one engineer of the Navy, and three civilian experts, for the purpose of making tests of the strength and value of all kinds of iron and steel and other metals, and for the building of a *suitable machine* for establishing such tests. The President appointed on this board General Q. A. Gillmore, Engineers, United States Army; Col. T. T. S. Laidley, of the Ordnance Bureau; Commander L. A. Beardslee, United States Navy; David Smith, Chief Engineer, United States Navy; General William Sooy Smith, civilian, civil engineer; A. L. Holley, civilian, civil engineer; R. H. Thurston civilian, civil engineer.

3. Under this act, which placed the board above named in the position formerly held by the Ordnance Office as regards this machine, the said board made a new contract with the claimant after he had been at work upwards of a year and a half under his original contract. By the said new contract the board required certain additional apparatus, which increased the weight of the machine about ten per cent., and for this additional apparatus added $6,500 to the original contract price, thus changing the price *to be paid from* $25,000 to $31,500.

4. Under this contract the work was continued unremittingly until the 8th of February, 1879, when the machine was completed and accepted.

5. From statements of the claimant, which there is no reason to doubt, it appears that his inventions embodied in this machine were for the most part matured prior to the date when the machine was ordered, to wit, the 24th of December, 1873. The papers show that at that time no design of the machine had been made, and that the claimant pursued with untiring industry and skill the designing, constructing, testing, and perfecting of this machine, which proved to be an unexpectedly difficult and expensive task. Colonel Laidley, president of the board above alluded to, says in regard to this, in a letter addressed to the President of the United States, dated February 10, 1879, two days after the machine had been accepted by the board, as follows:

> In the plans designed by Mr. Emery he adopted new principles, in the working out of which he met, as is always the case under such circumstances, with great and unlooked-for difficulty. In overcoming these difficulties, Mr. Emery has spent more money than he has received for the entire machine, to say nothing of his other expenses, time, labor, &c. He has throughout, in the performance of his part of the contract, shown a greater desire to make the machine perfect in all its details than to complete the work and obtain his money. The result of this unusual devotion is, that the United States has at this time a more perfect machine than was called for by the terms of the contract.

And in the same report to the President, in speaking of the character of the machine, he uses the following language:

> This machine combines the qualities of power and delicacy to an extent hitherto unknown, and is equally adapted to the testing of the ultimate strength of an iron bar 30 feet in length and 5 inches in diameter, and of a piece of wire of the finest size drawn, 1 inch long, and is capable of giving the exact strain of rupture of each. This is more than can be said of any other machine now in existence; in fact its capabilities and the ease with which the greatest strains are applied are such as to pass even the bounds of belief of those who have not witnessed its operation.

6. At the time of the acceptance of the machine, and prior to this report of the president of the board to the President, attention was called to the fact that the cost of the machine was vastly in excess of the contract-price. The claimant, without examination of his accounts, stated that the cost was at least $100,000. One member of the board thereupon recommended the payment of not less than $45,000 additional compensation, while five other members of the board recommended the payment of $70,000 additional, which latter amount, added to the contract-price, would only have reimbursed him for actual outlay as then estimated without any compensation for his own time and skill or for the use of his inventions.

7. The said members of the board, while recommending the payment of $70,000 additional compensation, state that as the board did not intend the machine should be made without a reasonable profit they would, had the contractor asked it, have recommended that he be paid for his time as well as disbursements.

8. The above-referred to report and letters of recommendation were made the subject of Senate Ex. Doc. No. 68, parts 1 and 2, 45th Cong., 3d sess., which reached Congress so near the close of the session that no action was taken thereon.

9. Since that time the claimant has accurately ascertained the cost of the machine, and has furnished a detailed statement thereof certified by affidavits of himself and of the parties who furnished the labor and materials. His memorial setting forth the history of the case, with proofs of the cost of the machine, were inclosed in his letter to the President dated March 27, 1880, which papers, with the indorsements thereon,

were made the subject of a special message of the President to the House, dated the 16th of April, 1880, and found in Ex. Doc. No. 74, present session.

10. The documents further show that before the machine was designed it was expected to contain, when completed, about 80,000 pounds of finished metal work, whereas it really contains about 170,000 pounds, and more than twice this quantity (or upwards of four times the amount it was originally expected to contain) was put into the furnaces and forges to produce it.

11. It further appears from the documents on file that in order to produce such a machine as the government and the board required, many parts, though constructed with great care, had to be made over and over again; and without entering into details as to changes, enlargements, new inventions and devices that were made and used to perfect the machine, it is sufficient to say that the proofs show the actual cost of the machine to have been upwards of $129,000, for which he has received $31,500, exclusive of interest. These proofs as to cost and other details were submitted to Colonel Laidley, president of the board, and carefully examined by him, and will be found in detail in Ex. Doc. No. 74, above cited.

12. This cost does not include any allowance for the value of the invention used in the machine, nor is there embraced in it anything for profits; both which items should be considered in fixing the amount to be paid, for no one could wish the government to use this machine even at cost, without compensation to him for his inventions and his time, nor that he should assume the heavy expense and risk involved without a fair profit.

13. The above would have been a reasonable basis of settlement but for the fact that in the sundry civil bill, approved June 20, 1878, Congress enacted—

> That the Secretary of War is hereby authorized to cause the machine built for testing iron and steel to be set up and applied to the testing of iron and steel for all persons who may desire to use it, upon the payment of a suitable fee for each test; the table of fees to be approved by the Secretary of War, and to be so adjusted from time to time as to defray the actual cost of the tests as near as may be; and, in order to make the final payment on contract for the construction of this machine, the sum of six thousand two hundred and ninety-nine dollars and forty-eight cents of the unexpended balance now remaining on the books of the Treasury of the appropriation for this purpose is hereby reappropriated and made available therefor.

This act, passed while the claimant was setting up his machine, virtually deprived him of the proper use of his inventions, most of which he had matured before the machine was ordered for the use of the government, and in the development of which he had spent, as has been shown, more than five years of time. The use of the machine by the government for the benefit of the public for merely nominal fees, manifestly deprives the claimant of any considerable market for the sale of these machines.

14. It is not the government only which is interested in testing the strength of materials, but manufacturers, constructing engineers, builders, and in general the whole public, who are constantly exposed to peril from the treachery of metallic structures of uncertain strength.

15. A letter from members of the board, dated February 17, 1879 (see Senate Ex. Doc. No. 68, Forty-fifth Congress, 3d session) says:

> He has spent every dollar he asks and more, we believe, on this machine, and the government has got the value of the expenditure tenfold as compared with the value of any other known testing machine.

16. The Secretary of War, *in his letter* to the President, informs him *that this is the most perfect testing* machine in the world, and that

Colonel Laidley and other members of the board recommend the payment of $200,000 to the contractor.

17. The following are the communications of the President and Secretary of War on the subject embraced in Ex. Doc. No. 74, before referred to:

EXECUTIVE MANSION,
Washington, D. C., April 16, 1880.

To the House of Representatives:

The board for testing iron, steel, and other metals, appointed under the authority of "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1876, and for other purposes," contracted with Mr. A. H. Emery, of New York, for a testing-machine, to be paid for out of the appropriation made for the purpose. That machine has been completed and accepted, and is now in position at the Watertown Arsenal, Massachusetts. It is spoken of by the members composing the late board as the most perfect and reliable machine in the world, embodying new mechanical principles and combinations not heretofore used in any other constructions.

In designing, perfecting, and making this machine, the contractor has expended large sums of money over and above the contract price, besides giving years of labor for which he has received no compensation. He now appeals to Congress for relief, and the papers herewith exhibit a case that calls for Congressional action. It is respectfully submitted to the House of Representatives, recommending speedy and favorable consideration.

R. B. HAYES.

WAR DEPARTMENT,
Washington City, April 14, 1880.

SIR: I have the honor to return the papers in the claim of Mr. A. H. Emery.

These papers have been referred to the Chief of Ordnance, and your attention is invited to his indorsement, and to that of Colonel Laidley, president of the late board on steel and iron, as well as to the views of some of the members of the board.

This is a case that calls for Congressional action. These papers show that it is one deserving favorable consideration.

The country is now in possession of the most perfect testing-machine in the world. The use of metals in all kinds of constructions, both private and public, demands as accurate a knowledge of their qualities as can only be determined by just such a machine as this, and its determinations will be of the greatest value to one of the most extensive industries in which our people are engaged.

It appears to me that liberal action on the part of Congress towards one of our citizens who has lost so much in faithfully carrying out his contract, would be but proper and equitable.

Colonel Laidley and other members of the board who are thoroughly cognizant of all the facts, name $200,000 as not excessive, "or more than sufficient to pay the contractor for his unusual devotion to the interests of the government."

I respectfully recommend reference of these papers to Congress with request for speedy and favorable action.

Very respectfully, your obedient servant,

ALEX. RAMSEY,
Secretary of War.

The PRESIDENT.

18. Accompanying this executive document will be found the letter of the claimant to the President of the United States, inclosing his memorial and exhibits, showing the cost of the testing-machine, which received the following indorsements in which the Chief of Ordnance and the president and other members of the board recommend the payment of this sum:

[Indorsements.]

EXECUTIVE MANSION,
March 26, 1880.

Calls attention to letter of president of Board for Testing Steel and Iron, recommending an appropriation to reimburse Mr. Emery for loss, allowance, and use of patent, &c., and incloses additional papers upon the subject.

Respectfully referred to the Secretary of War.

By direction of the President.

W. K. ROGERS,
Private Secretary.

[First indorsement.]

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, March 26, 1880.

Respectfully referred to Col. T. T. S. Laidley, president of the late Board on Steel and Iron, for remark.

1st. Mr. Emery now claiming compensation from the United States not only for the actual cost to him of the machine over and above the contract price, but for the use of his patents, and for consequential damages caused by the free use of the machine to all persons, as given by Congress, &c.

2d. Is the amount of $200,000, if *now* paid by Congress, excessive or more than sufficient to compensate Mr. Emery for losses and allowance on the contract, and for his time and labor and use of patents and damage from the free use of machine, &c., for all or any of these?

3d. Colonel Laidley will submit any papers bearing on this case.

By order of the Chief of Ordnance.

S. C. LYFORD, *Major of Ordnance.*

[Second indorsement.]

WATERTOWN ARSENAL, *March* 30, 1880.

Respectfully returned to the Chief of Ordnance.

The inclosed papers, which have been carefully examined by the undersigned, show that the testing-machine invented and constructed by Mr. A. H. Emery for the government has cost him much more than had been supposed in February, 1879, when, without going into an examination of books and papers, the cost was set down at $100,000. The undersigned thought, from a report made by the contractor in 1877, that the cost, when figured up, would be probably less.

The act of Congress, approved June 20, 1878, which directs that this machine shall be applied to the testing of materials for all persons who may desire to use it upon the payment of the actual cost of making the tests, which action virtually destroys the business of the inventor of building testing-machines, in that no one will purchase a machine when he can have the work of testing done by the government at less cost than he could do it himself if a machine were furnished to him free of charge, gives the inventor a strong claim for greatly-increased damages, and causes the undersigned to modify and increase the sum which, in his opinion, the government could well afford to pay for this machine and the losses its action has inflicted.

When the contractor undertook to build this machine he confidently expected that it would be completed within six months, whereas nearly five years were consumed in its perfection. This is nearly one-third of the entire life of his valuable patents, and involves a loss to him, without any fault of his, which, though doubtless great, it would be difficult accurately to estimate.

It rarely happens in the development of any new invention that the first construction does more than show what may be accomplished in succeeding efforts. In the present instance, however, so thoroughly were all the details digested, and such frequent changes made in drawings before they passed into the hands of the workman, that this first machine forms a marked exception to the general rule, and is more perfect in all its parts than could have been reasonably expected under the terms of the contract. This result, however, has not been accomplished without long and laborious study, and a corresponding increase of expense to the contractor. Since the government is thereby the gainer, it can well afford to offer a substantial compensation therefor. Had the contractor failed to raise the necessary funds to complete the machine in accordance with his high standard of excellence, the undersigned, though conversant with the testing-machines used by the principal nations, knows of none which could have been procured combining all of the desired qualities to the extent of that the United States now possesses. No one who has witnessed the facility of its operation, and understood the principles upon which it is based, has failed to appreciate and be impressed with the delicacy and accuracy of its determinations. This is a matter of no small importance, since it is to form the standard throughout the country for measuring such strains as are ordinarily determined by testing-machines. Its reputation is not confined to this continent, but wherever a knowledge of its capabilities has extended it reflects credit upon the American name.

Under these circumstances the government can well afford to be liberal with the contractor and make a fair compensation to him for his great creative power and unremitting labor during the five best years of his life.

The amount of $200,000, if now paid by Congress, would not, in the judgment of the undersigned, be excessive, or more than sufficient to pay the contractor a fair equivalent for his unusual devotion to the interests of the government, the work performed by him, and the losses sustained during the time that he has given up his undivided energies to this undertaking.

T. T. S. LAIDLEY,
Colonel of Ordnance, Commanding.

We, the undersigned, formerly members of the United States board for testing iron and steel, had supposed that the testing-machine had cost the sum stated by the contractor, and no one who has seen the machine will be surprised to learn that it has really cost a larger sum, as ascertained by the contractor in making up his accounts. We fully agree with Colonel Laidley in all his remarks with regard to the quality and value of the machine and the services rendered by Mr. Emery in designing and constructing it. And we think that he is justly entitled to compensation for its cost as shown and the allowance he asks as a contractor, and that he should be paid for his time and the use of his patents in the construction of said machine. We also think that Congress and the country can well afford to pay him the sum of $200,000 to settle his claim, and should any part of the cost of the machine or other part of his claim be for any cause disallowed, we would still recommend that a sum not less than $200,000 be paid him in recognition of his genius, fidelity, and services; and if not paid now we would recommend a larger sum hereafter as including compensation for delay.

WM. SOOY SMITH, *C. E.*
A. L. HOLLEY.
Q. A. GILLMORE,
Lieut. Col. Eng., Brt. Maj. Gen.

[3d indorsement.]

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, April 13, 1880.

Respectfully returned to the Secretary of War, inviting special attention to the indorsement of Colonel Laidley, president of the late Board on Steel and Iron, and the views of a majority of the members. The other members of the board, being absent or sick, have not been consulted.

As stated in my indorsement of February 18, 1879, herewith, I know nothing of the merits but what is made to appear by these papers. The inventor has produced a testing-machine believed to be the most reliable and perfect in the world, and reflecting the greatest credit on the inventive genius and mechanical skill of one of our citizens. No one can question the fact that in the laudable desire to do his whole duty to the country, and give it the master-piece of his designing and constructive faculty, he has seriously involved himself pecuniarily, and has not received any compensation for his very arduous labors. In the construction of this machine he has expended large sums over and above the amount paid him under the contract.

It is a case that appeals strongly to our sympathies, and to our sense of justice equitably rendered. In this view I respectfully recommend this matter to favorable consideration.

S. V. BENÉT,
Brig. Gen., Chief of Ordnance.

20. The documents before us show that the claimant has not only been waiting for the money equitably due him since the time when the machine was accepted, but that a large part of the disbursements now to be refunded were made during the period from 1873 to 1879; and it would have been but reasonable, in a work of this magnitude, that payments should have been made by the government from time to time as expenses occurred.

20. It will be seen that the President, Secretary of War, Chief of Ordnance, and president and members of the board all recommend speedy and favorable consideration.

21. Your committee recommend an appropriation of $200,000, as provided for in House bill No. 5990.

22. Legislation in reference to this machine may be found in the regular appropriation bills (*vide* Army bill, approved March 3, 1873; sundry civil bill, approved March 3, 1875; sundry civil bill, approved June 20, 1878; Army bill, approved May 4, 1880, appropriating money for the use of this machine).

Your committee therefore report the accompanying bill as a new draft of the one committed to your committee, and recommend that the same do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1585.

HELLEN WATTS.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DICKEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2065.]

The Committee on Claims, to whom was referred House bill No. 2065, entitled "A bill for the relief of Hellen Watts," having considered the same, submit the following report thereon:

The petitioner, Hellen Watts, is the widow of the late John G. Watts, who was postmaster at Williamston, Martin County, North Carolina, on the 2d day of December, 1871, and on the night of that day the building in which the post-office was kept was destroyed by an accidental fire, together with the money and other property belonging to the post-office.

Your committee further find that said loss was caused without negligence on the part of said postmaster, and that he promptly reported the same to the Post-Office Department, and that under an order from said department the said postmaster refunded and paid to the department the loss, amounting to the sum of $217.50, and that no part thereof has been paid to said Watts or his representatives.

Your committee recommend the passage of the bill for the relief of Hellen Watts, the widow of the said John G. Watts, and that she be paid, as therein required, the said sum of $217.50.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1586.

JONES C. BEENE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DICKEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2103.]

The Committee on Claims, to whom were referred the bill (H. R. 2103) entitled "A bill for the relief of Jones C. Beene, postmaster at South Pittsburg, Tenn.," and accompanying papers, having had the same under consideration, report as follows:

The evidence shows that Jones C. Beene was, on the 21st day of January, 1879, and still is, postmaster at South Pittsburg, in the State of Tennessee, and is a man of acknowledged character and integrity. It further appears that the post-office was kept at the depot of the Nashville, Chattanooga and Saint Louis Railroad, which was the best secured building and the most suitable place for the office in the place. The postage-stamps, stamped envelopes, postal cards, &c., belonging to the office were kept in a wooden desk used for that purpose, as being the safest and only available depository at his command. During the night of the 21st of January, 1879, an entrance was effected by burglars breaking through a window, which was barred. The desk containing the valuables belonging to the post-office, which was locked as usual, was broken open, and stamps, stamped envelopes, and postal cards to the value of $160 were stolen. The testimony further shows that the said postmaster were in no way negligent or careless, that the loss was unavoidable, and that he made every reasonable effort for the discovery and apprehension of the thieves without success. A communication from the Post-Office Department shows that he settled with that department for the loss. The bill provides that the proper accounting officer of the Post-Office Department shall place to the credit of the said postmaster on his account the amount of said loss, which your committee find by a statement from said department to be $160.

Your committee, being satisfied of the justice of the claim, recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1587.

JAMES DEVINE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1150.]

The Committee on Claims, to whom was referred the bill (H. R. 1150) for the relief of James Devine, have considered the same, and respectfully report:

That James Devine was the owner of certain lands in the State of Minnesota, viz, the SE. ¼ of SE. ¼ and lot No. 6 of section No. 28, and lot No. 8 of section No. 33, and the NW. ¼ of NW. ¼ of section No. 34, in township 108, range 31, containing 157 acres, 60 acres of which was timbered. During the Indian outbreak, known as the Sioux massacre of 1862, Company I Minnesota Mounted Rangers was stationed on said land for the protection of the settlers and built a stockade or fort thereon, 100 feet long, 75 feet wide, and about 10 feet high. They also built on said land four buildings of various sizes. All the logs, roofing, and shingles for said buildings were taken from the land of Devine. The troops occupied the fort, and used timber for fuel for a period of two and one-half years, and when the troops were removed they took some of said houses with them to other locations.

James Devine testifies that he was at the time the troops occupied the land, and is now, the owner thereof, having a patent for the same from the United States; that there is 157.72 acres of land, 60 of which was timbered; that less than one-fourth of said timber was left standing, the balance, 40 acres, being cut by the troops. The value of timber land at that time was from $20 to $50 per acre, and his loss by said damage was not less than $700, and at the time said timber was taken he was a resident of Milwaukee, Wis., and did not return to his land in Minnesota until 1866; that he has never received any pay or compensation for said loss.

Guttora Thorsdson and Tergrim Tergrimson testify that they own and live on lands adjoining the lands of James Devine; that there was no timber cut on said land before the troops entered thereon to build the fort. The timber land at that time in the vicinity of Devine's land was worth from $20 to $50 per acre; that the troops were there for two and one-half years, and the damage to Devine by loss of timber was not less than $700.

Iver Iverson testifies that he knows the property of James Devine, and to his positive knowledge there was no timber cut off said land previous to the occupancy by the troops, and that the loss to Devine was not less than $700.

John Hauenstein, a second *lieutenant* of Company I Minnesota Mounted

Rangers, testifies that he commanded said company at Fort Hauska, in township 108, range 31; that the fort and buildings were being erected during the time he had command; that the logs, roofing, shingles, &c., were taken from the land of James Devine; that Fort Hauska was built on Devine's land, and to the best of his knowledge there was about 60 acres of timbered land, and the actual loss at the time to James Devine's property by the destruction of the timber was not less than $700.

Mr. Devine being a resident of the State of Wisconsin from 1857 until 1866, when he returned to Minnesota, he learned for the first time that the State had adjudicated such claims, for which the United States reimbursed the State.

A bill for the payment of damages was presented to the State legislature, which received a favorable report, was passed to a third reading and defeated because the time expired that had been set for the State to pass on such losses.

Mr. Devine's absence from the State kept him in ignorance of the method of prosecuting his claim until some years after the property had been taken. When he was aware of the manner in which such property was paid for, he presented his claim to the legislature of the State of Minnesota. Payment was refused, it being a claim against the United States.

Your committee believe the property was taken by the troops for their use, and that the amount asked for the same is just and reasonable, and recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1588.

ROBERT D. WHITE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O'CONNOR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5180.]

The Committee on Claims, to whom was referred the bill (H. R. 5180) for the relief of R. D. White, have had the same under consideration, and report thereon as follows:

It appears from the evidence contained in letters and documents that R. D. White, the claimant, on the 4th October, 1878, made a proposal, which was written out in amount written as for $4,000, for flagging for the approaches to the United States custom-house building, Charleston, S. C., and, being the lowest bid submitted, was accepted by authority of the Secretary of the Treasury, October 16, 1878. It appears that when the department communicated to the claimant its acceptance of his proposal to do the job for $4,000 he remonstrated with the superintendent of the United States custom-house at Charleston, S. C., Mr. D. B. Thomas, that there was a mistake in the figures of his proposal or the department had made a mistake in reading them; that his proposal was intended to be for 4,600, and the mistake was made by his clerk, Campbell Douglass, in writing out the proposal, taking the figure 6 for a 0 in the second cipher of the sum of his proposal, and this was explained to the superintendent before the work was commenced. The leaf from the book upon which the original estimates were made out by claimant are in possession of your committee, and it is clear how the mistake occurred. And the superintendent in a letter to the Supervising Architect of the Treasury, dated October 23, 1878, mentions the fact that Mr. R. D. White, to whom the contract was awarded for the blue flagging, had mentioned to him that he had made a mistake in the figures of his proposal. Mr. White proceeded to complete his contract as accepted by the government, and executed the work in a workmanlike and thoroughly satisfactory manner to the superintendent at Charleston, as will appear by letter of said superintendent under date of April 8, 1879, and to the Supervising Architect, as will appear by letter from him dated April 17, 1880, which he concludes with the following sentence: "It may be proper to state that the bid of Mr. White was extremely low, the amount being $779 less than that of the next lowest bidder."

Your committee, from all the testimony before them in this case, have no doubt that a clerical error was fallen into in making out the original proposal, and as the claimant executed the job in good faith to the entire satisfaction of the government after he had remonstrated with the superintendent about *the error and* was assured that notwithstanding

the discrepancy he should be protected and was told to go ahead, believing that he would be saved harmless upon the completion of his job, it is but just that he should be paid the $600 which he has put in the work over and above the proposal as written, and of which the government now has the benefit and enjoyment.

Your committee recommend the passage of the bill.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1589.

CITY DISTILLING COMPANY, OF PEKIN, ILL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COVERT, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3150.]

The Committee on Claims, to whom was referred the bill H. R. 3150, *submit the following report:*

The facts in this case are fully set forth in the following letter from the Commissioner of Internal Revenue:

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, January 20, 1880.

SIR: In reply to yours of the 16th instant, I have to say that on the 15th of December, 1873, a claim for the refunding of $481.60, signed by H. E. Kickler, as secretary of the City Distilling Company, of Pekin, Ill., was filed in this office.

From the papers filed in the claim it appears that on the morning of November 28, 1873, Mr. Kickler purchased of Deputy Collector Turner, at Pekin, Ill., ten tax-paid spirit stamps, representing the payment of the tax on 863 taxable gallons of alcohol contained in ten packages numbered from 3421 to 3430, inclusive; that subsequent to the purchase of the stamps, but before they could be affixed to the packages, and the packages withdrawn from the bonded warehouse of the company, the said bonded warehouse and eight of the ten packages of alcohol were destroyed by fire.

It further appears that this destruction occurred without fraud, collusion, or negligence on the part of the company; that no portion of the spirits was covered by insurance, and that no unauthorized allowance or withdrawal has been allowed or permitted.

The eight packages of spirits destroyed contained 683 taxable gallons of spirits, and the tax thereon amounted to $481.60.

This claim was rejected by Commissioner Douglass on the 24th of November, 1874, "for the reason that the act of May 27, 1872, does not provide for a case where the tax was paid before the spirits were destroyed."

Mr. Kickler's letter inclosed by you is herewith returned as requested.

Respectfully,

GREEN B. RAUM,
Commissioner.

Hon. A. E. STEVENSON, M. C.,
House of Representatives, Washington, D. C.

Under the above state of facts it is but right that the amount be refunded to the City Distilling Company, of Pekin, Ill., and the committee therefore recommend the passage of the bill.

H CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1590.

GEORGE S. TRAMEL.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

T. COLERICK, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4545.]

e Committee on Claims, to whom was referred the bill (H. R. 4545) for he relief of George S. Tramel, having had the same under consideration, ubmit the following report:

he claimant, George S. Tramel, was a soldier in the Mexican War. served in Capt. S. B. Enyant's company of mounted Arkansas Vol-eers. While in said service he owned a horse which he used in the rice in which he was engaged. He alleges that while the company hich he was a member was encamped at or near Laredo, on the Rio nde, the horse was staked out with other horses, for the want of icient forage, and in a stampede of the horses his horse broke its gh, and thereby he lost his horse, which was of the value of $60.

he Third Auditor of the Treasury Department, in answer to a letter dressed to him by a member of this committee for information relative his claim, says:

ere is a claim (No. 16313) pending in this office in favor of said Tramel, for com-sation for the loss of a horse valued at $60, alleged to have been lost July 1, 1847. mant's allegations as to the value and loss of his horse are corroborated by First t. James P. Neal and George M. Kline, of his company. The records of the War artment show that claimant was mustered into the service on June 15, 1847, with a e and equipments appraised at $65; and that he and the witnesses referred to were ent with their command in July, 1847, but fail to show the alleged loss. The rs in the case were referred to the Second Auditor, who reported the signatures of mant and witnesses genuine.

he claimant bases his right to compensation for the loss of his horse ler and by virtue of section 1 of the act of March 3, 1849 (Statutes arge, vol. 9, p. 414), which is incorporated into the Revised Statutes he United States, second edition, 1878, which allows payment in all es "when the officer in the immediate command ordered or shall er the horse turned out to graze in the woods, prairies, or commons, ause the United States failed or shall fail to supply sufficient forage, the loss was or shall be consequent thereof." The act of June 22, 4 (Statutes at Large, vol. 18, p. 193), on the same subject, enacts t "payment in any case shall not be refused where the loss resulted n any exigency or necessity of the military service, unless it was sed by the fault or negligence of such officers or enlisted men."

he refusal of the Treasury Department to audit and pay this claim caused by the inability of claimant to prove his loyalty to the gov-ment during the late war of the rebellion, which proof was required

by the department under section 3480 of the Revised Statutes, wh provides:

> It shall be unlawful *for any officer* to pay any account, claim, or demand against United States which accrued or existed prior to the 13th day of April, 1861, in fa of any person who promoted, encouraged, or in any manner sustained the late re lion, or in favor of any person who during such rebellion was not known to be posed thereto and distinctly in favor of its suppression, and no pardon hereto granted or hereafter to be granted shall authorize the payment of such account, cl or demand until this section is modified or repealed.

The claimant, who was a citizen of the State of Arkansas during rebellion, is unable to prove his loyalty as defined in said statute. is unnecessary for us in passing upon this claim to express an opi as to the constitutionality of this statute, so far as it seeks to ef claims existing against the government *prior* to the rebellion. I sufficient to say that it merely restrains officers of the government fi allowing and paying such claims. This claim exists in favor of a gall soldier of the Mexican war, for a liability incurred to him by the g ernment while he was fighting in her service. The claim is just meritorious and should be paid. We therefore recommend the pass of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1591.

JAMES AND WILLIAM VANCE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COLERICK, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5495.]

The Committee on Claims, to whom was referred the bill (H. R. 5495) for the relief of James Vance and William Vance, have had the same under consideration, and submit the following report:

The claim in this case was considered and favorably reported upon by the Committee on Claims of the Senate during the present session, to whom was referred Senate bill 1268, for the relief of said James Vance and William Vance, which bill has been passed by the Senate, and is now pending in the House for its concurrence. The report of the Senate Committee on Claims fully and clearly states the facts in the case, and we adopt the same as our report, and recommend the passage of the bill referred to this committee (H. R. 5495).

[Senate report No. 252, Forty-sixth Congress, second session.]

(To accompany bill S. 1268.)

The committee to whom was referred the petition of James Vance and William Vance, asking for payment for the use of certain buildings at San Antonio, Tex., report as follows:

The same matter was before the Senate in the Forty-fifth Congress, and a favorable report was made thereon by the Committee on Claims.

This claim is for rent for the use and occupation of certain buildings in San Antonio, Tex., from the 5th day of August, 1865, to the 20th day of August, 1866, as well as the rental of certain dwelling house from September 1, 1865, to April 30, 1866.

The principal buildings, exclusive of the dwelling-house, were five in number containing twenty-two rooms; two of these were store-houses, each 30 feet wide by 110 feet deep, with two barracks, each 30 feet wide and 167 feet deep. These buildings had been rented before the war of the claimants, the government paying rental therefor at the rate of $625 per month.

At the time actual hostilities ceased, which was before the 5th of August, 1865, these buildings were in a damaged condition, and the claimants allege that at the request of Capt. H. S. Clubb, assistant quartermaster, they repaired the buildings at an expense of between seven and eight thousand dollars in gold; that such repairs were made for the purpose of inducing the government to rent the buildings. On the 5th day of August, 1865, the government, by its assistant quartermaster, took possession of the buildings before mentioned as well as the dwelling-house of the claimants.

The evidence is satisfactory on the question of possession having been given the government by the claimants.

It was in no sense a taking of possession by force, or without the consent of the owners. It is evident that the claimants and the assistant quartermaster understood that rent was to be paid for the use and occupation of the premises. The claimants allege that there was no positive agreement as to the amount to be paid, but it was supposed that the amount allowed would be the same as had been paid before the war. The assistant quartermaster reported the use and occupation of the premises to the department at Washington, with a diagram of the buildings, streets, &c., and under the

head of "Rate of hire or compensation," entered "Rate not settled." This statement was made monthly during the time these buildings were so occupied, and the testimony shows that it was the intention of the quartermaster and the claimants that rent was to be paid at such sum as should be fixed at Washington, and there is nothing in the case that will warrant the idea that it was taken possession of by force, or without the consent of the owners first obtained. It is evident that this was the belief of the claimants (that rent was to be paid), for, in the spring of 1866, the claimants presented the claim for rent of the premises, and were informed, May 9, 1866, that "under existing decision of the War Department, rent in States heretofore in rebellion cannot be paid by the Quartermaster's Department." This, the department claims, brings the case within the rule laid down by the Supreme Court in the case of Filor *vs.* United States (9 Wallace, page 45), and this is undoubtedly correct. The case of Filor *vs.* United States only decided that there was not such a contract as would entitle the plaintiff to sue in the Court of Claims, and it must be admitted that in this case the claimants have no standing in the Court of Claims. If they had they would doubtless go into that court.

Congress has uniformly allowed rent to claimants, where the premises occupied by the Army were occupied under contract.

It is, under the provisions of law, the duty of the Quartermaster's Department to furnish quarters for officers, and the Quartermaster's Department must provide storerooms, warehouses, depots for its supplies, and it cannot be said that while the Quartermaster's Department might contract for officers' quarters it could not contract for a building in which to put the stores indispensable to the existence of the Army, rank and file. If Congress is justified in recognizing as valid the contract made for the convenience of the officers of the Army, and the clerical force necessary for the efficiency of the Army, it certainly will be justified in recognizing the contracts made by the same officers for the rental of buildings, without which the Quartermaster's Department would hardly have been able to discharge the duties imposed on it by law, the least of which was the furnishing quarters for officers and their staff.

The claimants were, indeed, to expend a large amount of money in repairing the buildings, putting them in condition to be occupied by the government, and under a contract with the assistant quartermaster the claimants surrendered to the government the possession of the buildings at a time when war existed only in name and not in fact.

Such contract was made about two months after the Government of the United States had officially notified the governments of Europe that the war of the rebellion was at an end, that the authority of the United States was regarded in all of the late rebellious States. No armed force appeared against the government in the State of Texas after August 1, 1865, and the government did not after that time exercise the right (not denied to it in war) to seize the property of the citizens of disloyal States and occupy the same without compensation to the owners.

Under all the circumstances, your committee think it was the duty of the government, on the 9th of May, 1866, if the intention was to repudiate the contract, to have surrendered to the claimants the possession which had been acquired under a promise to pay rent, and, not having so surrendered the premises, your committee think that it does not comport with the dignity of the government to say that such rent ought not to be paid.

The government did pay rent for the premises, exclusive of the dwelling house, after August 20, at the rate of $5,000 per annum for a period, and subsequently at the rate of six thousand dollars per annum, and your committee think that the rent for the buildings so occupied, exclusive of the dwelling, ought to be paid at the rate of five thousand dollars per annum, and that the evidence shows that the rent of the dwelling-house was worth at least fifty dollars per month, making the total rent due the claimants the sum of five thousand two hundred dollars for the rental of the property, exclusive of the dwelling-house, and three hundred dollars for the use of the dwelling, or a total of five thousand five hundred dollars.

The committee therefore recommend that amount be allowed in full of all claims of claimants, and report the accompanying bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1592.

WIDOW OF C. C. SHAW.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. COLERICK, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of J. B. Croger and other citizens of Saline County, Kansas, asking for an appropriation of $6,000 for the widow of C. C. Shaw, who was killed by being run over by a stage carrying the United States mail, submit the following report:

It is stated in the petition "that the deceased, Christopher C. Shaw, on the 20th day of December, 1878, came to his death by means of a blow received accidentally on that day from the pole or neck-yoke of a hack running between Roxbury and Salina, in Kansas.

No liability, legal or equitable, exists against the United States in favor of the personal representatives of the deceased, or any other person, for damages resulting from the death of decedent. If any liability was created in their favor by reason of said accident, it exists against the person owning or running the stage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1593.

MOLLIE B. WALDO.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1609.]

The Committee on Claims, to whom was referred the bill (H. R. 1609) for the relief of Mrs. Mollie B. Waldo, widow of Roswell Waldo, late assistant surgeon in the United States Marine Hospital Service, submit the following report:

Your committee find that Roswell Waldo was appointed an assistant surgeon in the United States Marine Hospital Service February 8, 1877, and that shortly thereafter he was ordered to Cairo, Ill., to take charge of the marine hospital at that point. That he remained there during the terrible yellow fever epidemic which raged there in the summer of 1878 until his death by yellow fever.

In speaking of Surgeon Waldo, Dr. O'Reilly, who succeeded him at Cairo, says:

> Dr. Waldo died the morning after my arrival; I hear him spoken of in the highest terms of praise. He was the most popular physician in Cairo, and was universally respected and beloved by her citizens, to whom his death has proven a source of universal and sincere regret.

Your committee further find that Dr. Waldo left him surviving a widow and four small children who are entirely without means of support, and are entirely destitute. In view of all these circumstances, and since the statutes of the United States make no provision for the pensioning of the destitute widow and children of officers of the United States Marine Hospital Service, your committee believe that the claimant is entitled to relief, and therefore report back and recommend the passage of the *bill.*

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1594.

EDWARD T. BROWNELL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1650.]

The Committee on Claims, to whom was referred the bill (H. R. 1650) for the relief of Edward T. Brownell, beg leave to report thereon:

It appears from the evidence submitted to your committee that the claimant is the owner and holder of two pension drafts on the United States depository at Chicago, Ill., viz: One bearing date December 14, 1870, and payable to the order of Almira M. Bacon, for the sum of $60, and numbered 14478, and the other bearing date March 14, 1871, and payable to the order of Syrena McDade, for the sum of $30, and numbered 2481. Both said drafts were drawn at Chicago by B. J. Sweet, the pension agent at that place. It further appears that in 1871 the claimant was in trade at Oregon, Ill.; that he took said drafts in the regular course of business; that the drafts were forwarded to Rochelle, Ill., to be deposited for collection; that by an oversight they were mislaid by claimant's agent, in whose safe they remained with other papers undiscovered until the spring of 1876. When discovered, they were at once presented to the depository in Chicago for payment, which was refused upon the ground of the delay in presentatien, all the records and papers of the depository and pension agency at Chicago having been destroyed in the great fire of 1871. General Sweet, the pension agent, was also dead. The claimant thereupon applied to the Treasury Department for payment, which was refused. In a letter under date of May 15, 1876, Mr. Conant, Assistant Secretary of the Treasury, after reciting the destruction of the records by fire and the death of General Sweet, says:

> In view of the time that has elapsed since the issue of the checks, the destruction by fire of all the papers as stated, by which their correctness could be verified, and the fact that all the funds to the drawer's credit in the depository were checked out previous to the fire, thus raising a presumption that all the checks drawn had been paid, this department does not consider it proper to take any action in the matter with a view to the payment of the checks, as you request, without specific authority from Congress, to which you are respectfully referred.

In the opinion of your committee there is no doubt about the genuine character of the drafts or their non-payment. Your committee is therefore of the opinion that the claimant is entitled to relief, and report back said bill with a recommendation that the same do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1595.

ROBERT C. MURPHY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6374.]

The Committee on Claims, having had under consideration the petition of Robert C. Murphy, praying relief, beg leave to submit the following report thereon:

This case was before the Committee on Claims of the Forty-fifth Congress. Report No. 411, Second Session Forty-fifth Congress, was as follows:

That the facts in this case, as shown by the petition of the memorialist and a certificate from the Treasury Department, are as follows:

That said memorialist was appointed consul to the Empire of China, at port of Shanghai, in July, 1853, and served as such consul until the 30th day of June, 1857, when he resigned. That one William Knapp, jr., was vice-consul up to the time of the memorialist's resignation.

That in the final adjustment of said memorialist's accounts at the Treasury Department, he was held accountable for the informalities in the accounts of his vice-consul; that is to say, he was charged with $980.85, the amount adjudged due to the United States from the said William Knapp, jr., United States vice-consul.

That subsequently the United States Treasury allowed a part of the vice-consul's account, and paid the same, $490.17, to your memorialist, leaving a balance of $490.68 paid by your memorialist for said vice-consul.

That the said vice-consul was accepted as such by the Department of State, and was, therefore, in the absence of the consul, the chief officer at that port, and his acts could only be controlled by the department, the consul, with the department's knowledge, being in the United States. And the department had the power to stop payment of the vice-consul's drafts, and thus protect the United States; but, instead of so doing, they paid his drafts and charged the payments to said claimant.

Under the circumstances, your committee think the claimant should be relieved from the acts of the vice-consul, and that he should be refunded the amount thus paid the United States, and recommend the passage of said bill so referred.

Your committee, upon a re-examination of the case, find the facts correctly set forth in said report, and concur in the conclusions therein reached. Your committee therefore report the accompanying bill, and recommend its passage.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1596

MORRIS APPEL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3931.]

The Committee on Claims, having had under consideration the bill (H. R. 3931) for the relief of Morris Appel, beg leave to report thereon:

It appears that Appel entered into a contract with the Quartermaster's Department March 4, 1876, at Cheyenne, Wyo., to transport 30,000 pounds of oats from Cheyenne to Fort Fetterman, 160 miles, at $3 per 100 pounds, provided the freight was delivered within 25 days; if not so delivered, 10 cents per 100 pounds for each day's delay over 25 days to be deducted.

The claimant entered upon the execution of his contract, but was prevented from fulfilling the same after partial performance by the inclemency of the weather.

The claimant, in his sworn statement, says:

I did enter into such a contract, but there was a verbal agreement between Captain Gilliss and myself that if the weather was stormy and the roads bad that I was not to be held to the contract. There was a stipulation in the contract that if there was any delay in delivering the freight that I was to forfeit 10 cents per 100 pounds for each day's delay; but it was agreed between us that if any delay in the delivery of the freight was caused by the weather being stormy that the penalty was not to be enforced. My original bill called for something over 30,000 pounds. At the time the goods were loaded the weather was fine and pleasant, and there was no snow on the ground. About the 8th of March of that year it set in snowing, and fell from 6 to 8 inches on the level, accompanied by high wind and was very cold; snow drifted so that in places it was entirely impassable. The teamsters moved along from time to time as much as possible, until they got to Chug Water, at Kelley's ranch, at which place, owing to the depth of snow, I was compelled to buy hay to feed the cattle. I bought hay from Kelley to the amount of $116. At different points from Chug Water I offered to turn over the freight to the quartermaster. He urged me to push on, telling me that the freight (consisting of forage) was badly needed at Fort Fetterman. I pushed on to Laramie River. I delivered part of the freight to teams belonging to the government which were returning from Fort Fetterman to Cheyenne depot, and the balance to teams which had been sent from Fort Fetterman to receive it. The freight was at the rate of 3 cents per pound. This statement is made from memory, the papers not being within my reach, but I believe it to be correct.

The distance from the point of starting to where I was stopped by the snow is fully two-thirds, or a little over, of the whole distance which the freight was to be hauled. At the time the freight was delivered to the government teams the weather had begun to moderate, and I would have been able to deliver the freight in a short time, but it was said it was much wanted at Fort Fetterman, so they took it off my hands.

A letter under date of May 8, 1878, from the Second Comptroller of the Treasury, addressed to the Hon. W. W. Corlett, at that time a mem

ber of this House, contains a very full and complete statement of the case. It is as follows:

SIR: I have carefully examined the matter of the claim of Morris Appel, about which you inquired verbally. Appel contracted to transport 30,000 pounds of oats from Cheyenne to Fort Fetterman, 160 miles, at $3 per 100 pounds for the whole distance, provided the freight is delivered within 25 days. If not so delivered, 10 cents per 100 pounds to be deducted for each day's delay over 25 days. The agreement was in writing. Appel started on the 5th of March, carried the freight to Laramie River, a distance of 85 miles, where, on the 23d of April, Mr. Appel abandoned the trip, being unable to proceed further on account of the severe snow-storms and bad roads. At this point the freight was taken by government teams and transported to Fetterman, which place was reached on the 28th April.

There seems to be no dispute as to the facts. Mr. Appel admits his inability and failure to perform, but asks to be allowed and paid *pro rata* for the distance he actually carried the freight.

The Auditor has examined the case, and held that the claimant cannot be allowed any portion of his claim; that, according to the contract, the penalty, if enforced, would exceed the amount claimed, and the contractor is liable to suit for the difference. But he considers that the Quartermaster-General has waived his right to proceed against the contractor. The Auditor accordingly makes no statement of damages or penalty as against the claimant, but merely disallows his claim. I do not see that I can modify or change the findings of the Auditor. It appears to be correct. At the same time it must be admitted that it is a very hard case on the part of the contractor. He undertook the work in good faith; had suitable teams, &c., for ordinary weather, but the weather proved to be exceptionally bad, so that it became as he states absolutely impossible for him to perform his contract. His whole pay would have amounted to $900; he alleges that he expended, in his efforts to perform, a sum of $750, and only abandoned the work when it was absolutely impossible to do more.

The Quartermaster-General, the chief quartermaster of the department, and all the Army officers recommend an equitable settlement and payment *pro rata*, if such settlement can be made. It is not in the power of the accounting officers to make any settlement that would be in violation of the terms of the contract. It seems to be a case which might well be presented to Congress for relief.

I am, very respectfully,

W. W. UPTON, *Comptroller.*

Under the circumstances, your committee are of the opinion that the claimant is equitably entitled to relief, and that he should be allowed the sum of $750, and therefore report back said bill with the recommendation that it be amended by the insertion of said sum and put upon its passage.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1597

ALBERT FREITAG.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1151.]

The Committee on Claims, to whom was referred the bill (H. R. 1151) for the relief of Albert Freitag, have had the same under consideration, and respectfully report:

That the claimant, Albert Freitag, is a resident of Nicollet, Nicollet County, State of Minnesota, and resided there during the year 1862.

The testimony of Mr. Freitag shows that on the 25th day of August, 1862, he was on his way to Saint Peter, in said Nicollet County; that at the time he owned and was driving a span of gray horses, three years old; that said span of horses were in good condition; that while so driving he was met by Capt. E. St. Julien Cox, who had command of a company, marching to the relief of New Ulm, which was at that time besieged by hostile Indians of the Sioux Nation or tribe. Captain Cox, as an officer in command of the State forces, took from claimant his team, and pressed the same into the service of the volunteers he was then leading against the Indians; that Cox gave claimant a voucher or certificate, setting forth that his team had been taken for the use of the volunteers in the defense of New Ulm. In two weeks from the time said team was taken, claimant found them at Saint Peter, reduced in flesh, saddle-galled, and so poor that they could not be used until some time in the winter; that in consequence thereof he was compelled to hire a team to do his fall plowing. The claimant testifies that the voucher given him by Captain Cox was burned up with his father's house, and for a long time he thought he could not collect any compensation because he had lost the voucher. He has, however, furnished a certificate from Captain Cox, who is now judge of the ninth judicial district of Minnesota, certifying that he took the horses belonging to Mr. Freitag for the use of the volunteers he was in command of. The claimant has also produced a certificate from ten of his neighbors who were well acquainted with him at the time the horses were taken, and who state they believe the facts to be true as stated, and the use of the property with the amount claimed.

Your committee are of the opinion that the facts as stated by the claimant are true, and that he is entitled to relief in the sum of $65. They therefore recommend that the bill be amended by inserting said amount and put upon its passage.

C

NGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
sion. } { No. 1598.

GEORGE W. FLOOD.

30.—Committed to the Committee of the Whole House and ordered to be printed.

3ER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4030.[

nittee on Claims, having had under consideration the bill (H. R.
r the relief of Mrs. M. J. Flood, widow of George W. Flood, re-
y report:

ars from the evidence submitted to your committee that G. W.
s a laborer in the Office of Topographical Engineers at Wash-
om December 1, A. D. 1854, to September 16, 1856, a period of
ıe months and fifteen days; that during the said time, in addi-
s services as a laborer, he performed the duties of a clerk of
hat he was only paid the regular wages of a laborer. The
prays to be allowed the difference in pay between what her
actually received as a laborer for that period and what he would
ived as a clerk of class 1.
act of March 3, 1853 (10 Stat. L., p. 210), five clerks were
) the office of the colonel of topographical engineers, under a
ary power vested in the Secretary of War; by the same act
ıe of the clerks was removed from the Topographical Bureau to
of colonel of engineers, and from the latter office a clerk was
:d to the Office of the Secretary of War. Colonel Abert, chief
)ographical Bureau, finding that Mr. Flood was capable of per-
lerk duty, and that his work as a laborer was done chiefly
d after office hours, employed him to perform the work of
who had been taken away from the office, such work consist-
)ying letters and keeping a record.
ginal memorial filed in this case was referred to the House
e on Claims January 7, 1857. It has the following indorse-

ng the memorial correct, it is respectfully recommended to favorable con-

J. J. ABERT,
Colonel Corps Topographical Engineers.

R 11, 1856.

rits of the claim are very cordially approved by the officers of
u of Topographical Engineers.
D. Graham, in a letter to the Hon. R. M. C. Hunter, chairman
Committee on Finance, under date of December 4, 1856,

ge W. Flood has been actually performing the duty of clerk in the Topo-
ureau *at Washington for three* years and a half or thereabout, although

he has been receiving only the pay of messenger, there being no appropriation out of which he could be paid for his actual services. His services are fully attested by his official superior. * * *

Mr. Flood is a meritorious man, well known to me, as he served several years in the Northeastern Boundary Office under my command, as a soldier in the Army, from which situation he obtained an honorable discharge after five years' service.

Col. J. J. Abert, Chief of the Bureau of Topographical Engineers, in a letter to the Secretary of War, under date of January 26, 1857, says:

1st. The services of Mr. Flood, as a laborer, were usually performed before and after office hours.

2d. Finding him capable of doing clerk duty, he was employed on such duties during all the time for which he has made claim, in keeping a record of letters received and in the copying of documents.

3d. The causes which made necessary this employment are the quantity of copying in relation to office annual report and in order to meet calls of Congress, and because under the act of March 3, 1853, one clerk of class 3 for this office was arranged to the office of engineers (of fortifications). The additional clerk required in this office and provided for by act of August 18, 1856, was appointed on the 16th of September following, up to which time Mr. Flood claims compensation.

The claim, however, appears not to have met with the sanction of the War Department. On the contrary, in transmitting the following letter to the Hon. D. L. Yulee, then of the Senate Committee on Claims, Mr. Davis, then Secretary of War, says, under date of January 27, 1857:

I will remark that the necessity for the services performed was not known to the department, nor is it apparent now, and the claim does not therefore meet its approbation.

On this state of the case a bill for the relief of Mr. Flood was reported by the Senate Committee on Claims. (Senate bill No. 266, first session Thirty-fifth Congress.) This bill passed the Senate May 21, 1858. (Globe vol. 36, part 3, first session Thirty-fifth Congress, p. 2281.) It was reported to the House May 22, 1858. (*Ibid.*, p. 2309.) No action appears to have been had thereon in the House.

The case was again before the Senate committee of the Thirty-sixth Congress. In a letter to the Hon. A. Iverson, chairman of that committee, under date of April 27, 1860, colonel Abert again gives the history of Flood's services. In conclusion, he says:

Mr. Flood voluntarily offered to do anything that might be required of him, but there was no understanding with him, in writing or verbal, that he was to receive the compensation of a clerk during the time he was employed. His services as such were useful to the public service, and it is respectfully recommended that his claim be allowed.

On May 29, 1860, the Senate Committee on Claims again reported a bill for the relief of Mr. Flood. (Globe, vol. 41, part 3, first session Thirty-sixth Congress, p. 2421; S. No. 473, same session.) No final action seems to have been had upon this bill.

It thus appears that the merits of this claim have twice received the sanction of the Senate, notwithstanding the disapproval of the Secretary of War.

In the opinion of your committee the claim for relief is supported by strong equities. By the act of August 18, 1856, the Secretary of War was authorized to employ an additional clerk in the office of the Topographical Bureau. (Stat. at L., vol. 11, p. 118.) The employment of Mr. Flood to discharge the duties of a clerk only brought the force up to what it was before, and after the time of his service. The service rendered by him was in addition to his duties as a laborer, and in the opinion of your committee it is fit and appropriate that his widow, who is now alleged to be in needy and destitute circumstances, should receive some compensation therefor.

By section 3 of the act of March 3, 1853, the salary of clerks of class 1 is fixed at the sum of $900 per annum. (Stat. L., vol. 10, p. 209.) This act appears to be the law regulating the pay of clerks of this class during the period for which the difference in pay is prayed in this case.

The amount of pay actually received by Flood for his services as a laborer during the twenty-one months and fifteen days was $1,037.

On the basis of $900 per annum (the salary of a clerk of class 1) the difference in pay is the sum of $575.50. Your committee therefore recommend that claimant be allowed this amount, and report back said bill with the recommendation that it be amended in accordance herewith and passed.

rH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1599.

FRANKLIN LEE AND CHARLES F. DUNBAR.

rE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 171.]

e Committee on Claims, to whom was referred the bill (H. R. 171) for the relief of Franklin Lee and Charles F. Dunbar, beg leave to report:

It appears from the evidence submitted to your committee that on the st day of August, 1872, Maj. G. L. Gillespie, of the Corps of Engineers the United States, for and in behalf of the United States of America, tered into a written contract with the claimants, Franklin Lee and arles F. Dunbar, under the firm name of Lee & Dunbar, in and by ich contract Lee & Dunbar agreed to remove from the channel tween piers of entrance to the harbor of Ashtabula, Ohio, at such ints as the engineers in charge might direct, 5,000 cubic yards, more or s, of shale rock, by drilling, blasting, and dredging; 500 cubic yards, re or less, of loose rock; and 6,000 cubic yards, more or less, of sand or vel, by dredging, so as to gain 14 feet, low stage, in the cut or cuts, of h length, depth, and width as the engineer in charge might direct, said Lee & Dunbar to receive for each and every cubic yard of solid k so removed the sum of $2.75 for each and every cubic yard of loose k so removed the sum of 50 cents, and for each and every cubic yard sand removed from any part of the channel inside or across the outer the sum of 35 cents. It was further provided in the contract that work of drilling, blasting, and dredging should be subject to a rigid spection by an inspector appointed on the part of the government; at Lee & Dunbar should commence immediately, or not later than ptember 10, 1872, and should complete the same on or before the 1st y of July, 1873; that payments should be made when the drilling, asting, and dredging had been executed and accepted, with the reservation of 10 per centum until the completion and acceptance of the whole rk. It is alleged by the claimants that they in due season entered on the performance of the work stipulated in the contract, and prosuted the same with diligence, and that in the fall of the year they re directed by Major Gillespie to continue the blasting during the nter, which they did until the last of February, when they were rected by the engineer, through his inspector, to cease operations, as e work had exceeded the appropriation made by Congress; that upon easurement it was found that the claimants had blasted in excess of eir contract 9,240 cubic yards of solid rock. It is also alleged by the aimants that for this excess of work above the contract no compensaon has *ever been made to the claimants* by the government; that under

some arrangement with the Ashtabula, Youngstown and Pittsburgh Railroad Company the claimants have in some manner been indemnified for the blasting of 4,140 cubic yards of rock, leaving a balance of 5,100 cubic yards of rock blasted by them, and which was removed by the subsequent contractor, F. A. Seymour, for which they have never received any compensation whatever, and for which the present bill was introduced.

There seems to be no question whatever that the work of blasting prosecuted by Lee & Dunbar in excess of their contract was not only appropriate but necessary to the further and successful prosecution of the work of improvement of said harbor; nor is there any question that it was well and properly done by them. The only question is whether it was a voluntary and unauthorized act upon their part, or whether it was done by them in good faith, with this sanction of the officers of the government. It is claimed by Lee & Dunbar that they were requested by Major Gillespie to continue this work; that they did so in good faith, and, as they supposed, with the sanction of the officers of the government in charge of the work. On the other hand, the denial of Major Gillespie is equally explicit and emphatic. It becomes, therefore, important to analyze the evidence submitted to your committee upon this controverted question of fact.

Major Gillespie, in a communication to the Chief of Engineers, under date of April 3, 1874, says:

> The appropriation for the improvement of the Ashtabula Harbor, Ohio, by act approved June 10, 1872, was $15,000. After receiving notification of the passage of the act granting the appropriation, I prepared plans and estimates for the work contemplated under the appropriation, &c. * * * * Sealed proposals were opened at noon, Tuesday, August 20, 1872, and Messrs. Lee & Dunbar, proving to be the lowest bidders, it was recommended to the Chief of Engineers that their proposals be accepted. This recommendation was approved, and the contract was entered into with them on the 31st day of August, 1872, conformable to the terms of their proposal. Under this contract they commenced work in October, 1872. During that month they removed, according to scow measurement, 1,940.88 cubic yards of solid rock, 3,666.6 cubic yards of sand, and during November, which was the last working month of the season for the dredges, they removed 1,810 cubic yards of rock and 1,014.3 cubic yards of sand, scale measurement; total for the season, 3,750,88 cubic yards of solid rock, and 4,680.9 cubic yards of sand, scow measurement. * * * As the contractors desired monthly payment, I paid them, on or before the 10th of the month following the receipt of the approximate returns, for a number of cubic yards of rock and sand, which in my judgment would be slightly less than what bank measurements would develop, it being impossible, in the incomplete state of the work, to make accurate measurements monthly. In accordance with this arrangement I paid Messrs. Lee & Dunbar, November 7, 1872, on voucher 45, for 1,496 cubic yards of solid rock and 2,933 cubic yards of sand, the sum of $4,626.50, retaining $514.05 until the completion of the contract; and December 9, 1872, on voucher 46, for 928.58 cubic yards of rock and 1,279 cubic yards of sand, the sum of $2,701.12, retaining $300.12, the total of both payments being for 2,424.58 cubic yards of rock and 4,212 cubic yards of sand; amount, $,7327.52, retaining percentage, $814.17.
>
> At this stage of the improvement the authorities in charge of the construction of the two railroads terminating at that harbor were desirous that the harbor should be in a condition to accommodate their coal vessels at the earliest practicable moment after the opening of navigation in 1873. They requested me to meet them at the harbor about the 1st of December, I believe, which I did, and we examined together as well as we could the improvement, the river at that time being frozen over. They asked the balance of the appropriation available for the improvement, and on being told that it was something over $7,000, they begged that I should not suspend drilling and blasting, promising to put on their own dredges in the spring to remove whatever stone was left over after the appropriation was exhausted. I declined to act in connection with them, but promised to authorize the contractor to blast in the interest of the government to the limit which I would define after I had examined more closely my cash balance. On my return to Buffalo I sent for Mr. Lee, one of the contractors, and stated to him what had passed during the interval with the railroad authorities, and requested him to finish his remaining blasting at once, or at such times during the winter as his force could work. He was glad to continue his work, as he said a sus-

pension would entail an expense upon them which they were unwilling to bear. At the same time he said they must be paid as their blasting progressed, it being impossible to dredge. This I at first declined to do, but after reflection, and influenced by the commercial benefit accruing from the speedy execution of the improvement, I agreed to pay the contractors to the extent of $4,000 after I had become satisfied that they had done sufficient work to cover that amount, it being adjusted to allow the drilling and blasting to be paid for at the rate of $1.75 per cubic yard, leaving $1 per cubic yard for the subsequent removal at their risk. My inspector was to remain upon the improvement to see that they conformed to the government plan. I told him I could in no way act with the railroad authorities in their project, but if he made any arrangements with them for blasting, &c., his directions would have to conform to my plans as indicated by my inspector. Under this understanding the contractors were authorized to drill and blast to the extent of about 2,280 cubic yards of rock. In February it was discovered that they had drilled and blasted more than four times the amount they had been authorized to drill and blast, and they were at once directed to stop work. * * *

For this additional work I paid them, February 10, 1873, for 1,800 cubic yards solid rock, drilled and blasted, at $1.75 per cubic yard, amounting to $2,835, retaining $315; and May 6, 1873, for 635 cubic yards, at $1.75 per cubic yard, amounting to $1,000.13, retaining $111.12; making a total of 2,435 cubic yards of rock, or 155 cubic yards more than I had promised to pay for. The contractors received no authority from me to extend their work beyond the limits provided by the contract, and I cannot believe that any claim for remuneration for extra work can be established in equity. They either intentionally exceeded their contract, hoping to secure payment from a future appropriation, or from the railroad authorities, or they allowed their subcontractor for blasting to enter upon the improvement, agreeing to pay him a certain price per yard for drilling and blasting, reserving to themselves the dredging, but failed at the same time to give him the number of yards to be removed under their contract, and further failed during the progress of the work to give that attention to the improvement which the protection of their interests demanded. As the river was frozen over no detailed measurements could take place, and as the contractors professed to have skilled men, and knew what they had to accomplish to complete their contract, I did not feel it incumbent upon me to say that they should work three weeks, or four weeks, or any definite time, for the circumstances of rain and cold weather tended to modify any limits that I might set. Under the circumstances they were left to be the judges of the time of suspending work, it being believed that their own interests would show to them the necessity of keeping within safe limits.

Recapitulation of payments.

Date.	Rock, cubic yards.	Sand, cubic yards.	Amount paid.	Amount retained.
November 7, 1872	1,496	2,933	$4,626 50	$514 05
December 9, 1872	928.58	1,279	2,701 12	300 12
February 10, 1873	1,800	.....	2,835 00	315 00
March 6, 1873	635	.....	1,000 13	111 12
Total	4,859.58	4,212	11,162 75	1,240 29

In a previous communication to the Chief of Engineers, under date of March 20, 1873, Major Gillespie says:

At their (Lee & Dunbar's) request, I allowed my inspector to remain on the work to give depths of drill-holes and to indicate the order in which the channel was to be improved. * * * Very little was done in December, and the results were embodied in the report for January. The report for January was received early in February, but as my assistants were actively engaged in preparing a chart showing the condition of their season's work at other harbors, the Ashtabula work was laid aside for future consideration. It was taken up, however, about the middle of the month, and when the results were transferred to the chart, the amount of the work accomplished did not at first attract my attention. Just before the close of the month I became aware that the contractors were exceeding their contract, and were working apparantly without any regard to their contract. I therefore directed my inspector to stop the drillers. The inspector sent in his report without delay, and calculations were made to ascertain approximately how matters stood. * * * The calculations give approximate results, but it is certain that the subcontractor has drilled and blasted not less than 10,000 cubic yards of rock. The contract was for 5,000. I gave the contractor no authority for such work. * * * Lee & Dunbar have done their

drilling and blasting well, as far as we can judge before the dredging has been done, and in the order in which the work was to be prosecuted. But they have either intentionally exceeded their contract, hoping to be able to secure payment from the new appropriation, or they have negligently, in the pressure of other business, allowed their subcontractor to continue the work without the proper instructions. They have no right to claim the privilege of removing the rock they have blasted outside of their contract, and should receipt payment according to the terms of their contract. It would seem that the only just way to settle the matter would be to pay the subcontractor the price he was to receive per cubic yard from Lee & Dunbar for the drilling and blasting, and then to invite sealed proposals by public advertisement for the removal of the blasted rock.

The claimant Lee, on the other hand, in his sworn affidavit, herewith submitted, under date of May 19, 1874, says, among other things, that "in the month of December, 1872, he was sent for by Colonel Gillespie, the engineer in charge of the work, and asked to prosecute the work of blasting during the winter on the ice, and after one or two intervals agreed to do so, on being assured of receiving $1.75 per yard towards the blasting as the work progressed. Ice did not form until quite late in December, and but little work was done that month. In January, 1873, the work progressed better, and on applying for pay was told the return showed that we had blasted about 2,600 cubic yards, but that as he, Colonel G., wished to be perfectly safe in paying us, he should only pay us for the blasting of 1,800 cubic yards. The rest would come in when we removed the rock in the spring. This was about the 10th of February. The question was asked me as to how the work was progressing, and I told him I was not there, but understood there was a large force at work, and the blasting was going on quite fast. The next day, I think, my partner, Mr. C. L. Dunbar, being in Buffalo, I took him with me to see Colonel Gillespie, as he, having been at Ashtabula, could answer his questions more definitely. In the conversation the colonel seemed quite anxious about the blasting, that it should go on so that he could get a channel for vessels early in the spring. In the conversation he marked out on a diagram the instructions he had given to Smith, the inspector in charge at the harbor, as to how much of the channel was to be blasted, and my partner observed to him, 'Colonel, that will take considerable money. Have you enough?' And he replied, 'Yes, I have enough for this'; to which my partner replied, 'Well, you are the doctor.' This was about the 11th or 12th of February, and blasting, as we told him, had been going on quite fast all the time from January 31, the date on which the returns were made, upon which Colonel G. had paid us some. About the 25th of February I received a letter from J. Louis Lynn, who was doing the blasting for us, complaining that he was not getting pay for the number of yards actually blasted, and asking me to see Colonel G. and arrange to have payments made prompt. This letter I showed to Colonel Gillespie, and he seemed surprised at it, and said, 'There is some mistake; it cannot be so.' I replied, 'I do not know, but the one who writes is a civil engineer and ought to know what he writes.' He immediately got out his maps, and, referring to the plotting, said, 'I have forgotten that in making the water 14 feet deep instead of 12 feet the channel becomes materially longer, as the rock to be blasted is sloping, and that accounts for the large increase of yards.' I asked him if I should stop the work. He replied, 'I will write to Smith about it.' All our actions were in entire good faith, and supposing the engineer in charge of the work knew the amount of yards in the channel to be blasted, and where the money was coming from to pay us for the work."

The inspector of the work, Mr. Horace Smith, in a statement under oath addressed to the claimants, made December 15, 1874, says:

I was United States inspector at Ashtabula, Ohio, from August, 1871, to December, *1873.* * * * In a letter of October 24, 1872, Colonel Gillespie authorized me to take

advantage of the weather and put in drills on either east or west side of harbor during January, 1873, while blasting was in progress through the ice. Colonel Gillespie visited the work and gave instructions to alter the plan of low water to one foot lower, in consequence of which the blasting was from that date carried to that much lower depth. My instructions were to take out ledge from inside to outside, and were accordingly so transmitted to yourselves. The blasting was carried on with this understanding until, by letter of authority dated February 26, 1873, I returned to Major Harwood, United States Engineers, in an official capacity, the amount of rock dredged by F. A. Seymour during August, September, and October, 1873, all of which was blasted by yourselves, as per official instructions from the engineer's office at Buffalo. I returned to that office the amount of rock removed by you in getting a center channel for the Ashtabula, Youngstown and Pittsburgh Railroad Company, and know that the greater portion of it was blasted by you during the winter of 1872 and 1873 under foregoing instructions.

In a supplementary statement by Smith, under oath, February 29, 1876, he says:

As supplement to my statement of December 15, 1874, I add, that the work done by you up to February 26, 1873, was done under authority received by me from G. L. Gillespie; that I made full official report to him at Buffalo of work done up to that date. I have read G. L. Gillespie's report, wherein he states that he allowed me to stay, at the request of the contractors, until the amount of 2,280 cubic yards were blasted. As regards that, I can say that the only instructions I had were to take out the ledge from inside to outside to the required depth until February 26, 1873, when I was ordered to stop the contractors.

The claimants have also submitted a letter, under date of January 12, 1874, from William McCreery, President of the Ashtabula, Youngstown and Pittsburgh Railroad Company, as follows:

ESSRS. LEE & DUNBAR:

GENTLEMEN: In reply to your inquiries, I would say it was in January, 1873, I think, at I was in Buffalo for the purpose of seeing the United States engineer as to the ospects of the early completion of the work then in progress at Ashtabula, Ohio, so to enable vessels to enter the harbor with a full load, my object being to so arrange e construction and completion of the Ashtabula, Youngstown and Pittsburgh Railad that it would be ready for business as soon as possible after the completion of e channel then being drilled and blasted. During the conversation Colonel Gilles- showed me his map of the harbor, and traced out upon it the channel he had di- ted the inspector to have drilled and blasted during the winter, and stated that he d plenty of money to complete the channel according to the directions given to the pector in charge of the work, and further stated that his instructions were to have blasting done to the depth of fourteen feet below the new standard for low water, ich new standard was a foot deeper than was first intended. Towards the close of e conversation, in reply to my asking as to the need of further appropriations, he reated that there was plenty of money to finish the channel, so that vessels could er the harbor early in the spring, so soon as the dredges could take out the loose k blasted during the winter.

Yours, truly,

WILLIAM McCREERY.

The claimants have also submitted a letter from Colonel Gillespie mself to A. Stone, jr., of Cleveland, Ohio, dated Buffalo, N. Y., December 20, 1872, as follows:

DEAR SIR: Your kind favor of the 17th instant is before me, and I have the honor state, in reply, that my estimate for the harbor at Ashtabula calls for $16,000, which ll take out fully all the rock on the inner bar to 14 feet and over, low stage, and ll dredge the outer bar to the same depth. The work of blasting, under the old appriation, will continue during the winter, and I hope to be able to give a clean annel early in the spring. * * *

I have no fears as to my ability to give at Ashtabula, at an early day in the spring, the water that the largest class of vessels require.

am, sir, very truly,

G. L. GILLESPIE,
Major of Engineers, Brevet Lieut. Col., U. S. A.

The foregoing is substantially all the evidence submitted to your committee on this question. *After careful* consideration of the same, your

committee is of the opinion that the work of blasting, prosecuted by the claimants, Lee & Dunbar, in the harbor at Ashtabula, Ohio, in excess of their contract, was performed by them in good faith upon their part, and with the full knowledge, sanction, and acquiescence of the government officers in charge of the work. And your committee is further of the opinion that said claimants, Lee & Dunbar, are equitably entitled to compensation for the blasting of 5,100 cubic yards of rock, for which, as it appears, they have never been paid. Your committee are fortified in this conclusion by the following:

Mr. F. Harwood, major of engineers, in a letter to the Chief of Engineers, under date of January 27, 1874, among other things, says:

> I therefore respectfully submit that they (Lee & Dunbar) should be required to substantiate their claim by legal evidence of their good faith in the matter, and, this being done, they could then be reimbursed either by special act of Congress or, if needbe, by draft upon future appropriations. The fact still remains that their act, however unauthorized, nevertheless benefited the harbor proportionately.

In a further communication, under date of January 30, 1874, Major Harwood says:

> 1. Lee & Dunbar blasted at Ashtabula Harbor, in 1872–'73, 5,100 cubic yards of rock in excess of the appropriation for 1872–'73.
> 2. The work was well and thoroughly done.
> 3. There was no rate contracted for drilling and blasting only, and therefore they would have been entitled to no compensation under the contract. The work was properly embraced in the further prosecution of the improvement of the harbor.

As to the rate of compensation to be paid claimants in case they are entitled to relief, your committee find no difficulty in reaching satisfactory conclusion.

In a communication from Major Harwood, under date of March 2, 1874, that officer recommends, in case payment be made at all, that it be at the rate of $1.50 per cubic yard, that figure being in his estimation fair compensation.

Your committee are therefore of the opinion that said claimants are entitled to the sum of $7,650, in compensation for the blasting of said 5,100 cubic yards of rock.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1600.

HERBERT JOYCE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. THOMAS UPDEGRAFF, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5748.]

The Committee on Claims, to whom was referred the bill (H. R. 5748) for the relief of Herbert Joyce, would respectfully report:

That on the 4th day of January, 1864, Herbert Joyce enlisted for five years in the Sixteenth United States Infantry (Regular Army), and was assigned to Company B, Second Battalion, then at Chattanooga, Tenn.; that his company accompanied General Sherman's Army, and Joyce was in three of its battles, and was, on the 28th May, 1864, in the battle at New Hope Church, Ga., taken prisoner, sent to and confined in Andersonville military prison until December 11, 1864, nearly seven months; that he was exchanged and returned to Chattanooga, Tenn.; that he was then but sixteen years old, and being disheartened and homesick (from the hard duty, for one so young, and confinement), without proper furlough he went to his home, but with no apparent intention of deserting. He was arrested as a deserter, tried before a court martial, and sentenced to forfeit all pay and allowances then due him or that might become due him, and, in addition thereto, be confined at hard labor for the remainder of his term of enlistment. Upon this sentence he was confined at hard labor some four months, when Major General Thomas remitted the unexecuted portion of the sentence and he was returned to his company. After return to his company he continued a faithful soldier for the full remainder of his term of enlistment, and also the full time lost by reason of the desertion in addition thereto, and was honorably discharged for full term service.

At the time of the sentence of the court martial, and subsequently during his confinement under same, there was and became moneys due him for bounty, pay, and allowances, and which the government refused to pay him upon his final honorable discharge, for the reason that it was part of the executed portion of the sentence of the court martial and not remitted by order of General Thomas. This the government still retains, and Joyce has never been paid same. The government has received full term service, including all loss of time, and agreed to pay these allowances and bounty therefor; and your committee consider his youth, his imprisonment nearly seven months as prisoner of war at Andersonville and nearly four months confinement at hard labor upon the sentence of the court martial, his subsequent faithful service for full

term and all time lost, and honorable discharge, are unanimously of the opinion the government should adjust and settle with him for all bounty, pay, and allowances retained from him by reason of the sentence of the court martial, and they therefore report this bill favorably to the House, and recommend its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1601.

SAMUEL I. GUSTIN.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of Samuel I. Gustin, of Macon, Ga., asking compensation for fuel furnished to and used by the United States troops, respectfully report as follows:

That they have had the same under consideration; and that not being able to find any evidence or proof to substantiate the claim, they ask to be discharged from further consideration of the same, and that it be laid upon the table.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1602.

HEIRS OF MATTHEW ALLISON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

The Committee on War Claims, to whom was referred the petition of the heirs of Matthew Allison, of Nashville, Tenn., asking compensation for money alleged to have been unlawfully taken from said Matthew Allison by military officers of the United States, and transmitted to the Secretary of the Treasury, respectfully report as follows:

That they have had the same under consideration; and that not being able to find any evidence or proof in the Treasury Department, or elsewhere, to substantiate the claim, they ask to be discharged from further consideration of the same, and that it do lie upon the table.

O

[H CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1603.

VIDAL HERNANDEZ.

E 4, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

. ATHERTON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6375.]

e Committee on War Claims, to whom was referred the petition of Vidal Hernandez, praying payment for the transportation of cotton seized by the United States military authorities in Texas, beg leave to report:

That Vidal Hernandez was a resident of Western Texas during the e civil war, and was undoubtedly loyal. He had two sons in the nion Army (First Texas Cavalry), and by reason of his sentiments was ced to cross into Mexico and abandon his property and effects except rain of wagons and mules that he took with him. That about the se of the war the regiment to which claimant's sons were attached ived on the Rio Grande, and they advised him to recross with his gons and mules to San Antonio and transport cotton into the Union es. In pursuance of this advice the claimant did recross into Texas, l hauled 102 bales of cotton, belonging to the so-called Confederate te of Texas, from San Antonio, Tex., to Ringgold Barracks, Tex. The ton weighed 48,960 pounds, and for that service J. K. Hudson, major Sixty-second United States Cavalry, in charge of abandoned property, cuted in triplicate a voucher showing that there was due Vidal Herdez for the hauling of 75 bales of cotton marked B. M. C., and 27 es marked S. T., from San Antonio, Tex., to Ringgold Barracks, Tex., sum of $2,203.20, being 48,960 pounds at 4½ cents per pound. The ucher is or was on file in the Treasury Department.

There is no proof of the value of this hauling, or, indeed, of the num- of pounds transported, except as appears by the voucher of Major dson. This has long been on file in the Treasury Department, and yment of the claim there insisted on, and it does not seem to have en questioned. In fact the claim seems not to have been disputed, l was not paid simply because the Treasury Department had no appriation out of which it could have been paid.

Your committee recommend the payment of the claim, and accompany eir report with a bill for that purpose.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1604.

WARREN HALL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TYLER, from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6376.]

The Committee on War Claims, to whom was referred the petition of Warren Hall, of Saint Louis, Mo., submit the following report:

The testimony in this case shows that the said Hall was the owner, in his own right, of five bales of cotton, valued at $1,042.61, which were situated upon the plantation of B. R. Roach, at or near Greenville, Miss.; that in the year 1863, to protect the cotton from rebel raiders, said Hall placed it on board a steamer to transport it to Young's Point, and thence by the steamer Hiawatha to Memphis, Tenn., where it was turned over to a special agent of the Treasury. Areceipt is put into the case, dated July 7, 1863, and signed by T. H. Yeatman, as special agent of the Treasury, showing that the propertywas abandoned as alleged, and that the same had been disposed of in accordance with the acts of Congress relative to captured and abandoned property. A transcript from the records of the Treasury is hereto annexed as an appendix to this report.

It appears that, at the same time that this property was turned over to the government, one B. M. Robinson also turned over 106 bales of cotton belonging to him, and said Hall testifies that he supposed that Mr. Robinson had authority to collect the proceeds of his cotton, together with his (Robinson's) own. It seems that Robinson did not succeed in collecting the proceeds of his cotton from the Treasury until July 8, 1864, and Hall avers that he did not learn until several months after that that Robinson had not collected the proceeds of his cotton, and that he was unable to ascertain the situation of his claim.

He says that in the fall of 1864 he applied to Mr. Abbott, an attorney at Saint Louis, who was then coming to Washington, and employed him to attend to his claim, and he promised to do so; that he did not see said Abbott again until the latter part of 1867, when Abbott told him he had left the matter in the hands of an agent at Washington, and was expecting to hear from him; that said Abbott never did anything for him; that he next applied to Senator Henderson, just before the session of Congress in December, 1867, to aid him, which he failed to do.

In the winter of 1868 he came to Washington for the purpose of learning the situation of his claim, and applied to different persons to assist him without success. He remained here till the next spring, and finally succeeded in obtaining from the Treasury a statement showing that his money was in *the Treasury; that in* the winter of 1872 he came here,

and also in each subsequent year, and finally applied to Congress for relief.

The claimant is an ignorant man, and he was not aware that he should have prosecuted his case in the Court of Claims prior to August 20, 1868.

Under the circumstances, the committee have deemed it just to report the accompanying bill for the claimant's relief, and to recommend its passage.

UNITED STATES OF AMERICA:

TREASURY DEPPARTMENT,
March 19, 188[illegible].

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of papers on file in this department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

JOHN SHERMAN,
Secretary of the Treasury.

MADISON PARISH, LA., *June 5th*, 1863.

This is to certify that I have abandoned to the Government of the United States five (5) bales cotton, and have appointed Richard M. Robinson as my special agent to settle with the government for same. He is hereby fully authorized to collect & receipt for any money when cotton is sold, or make such disposition of it as he may think best.

his
WARREN + HALL.
mark.

Witness:
CHARLES DELANO.

MEMPHIS, TENNESSEE, *July 7th*, 1863.

Hon. THOMAS H. YEATMAN,
Special Agent Treasury Dept.:

SIR: I wish to abandon to the Government of the United States five (5) bales of cotton belonging to one Warren Hall, a freeborn colored man—said cotton coming from one Roach's plantation, near Deer Creek, Miss. He authorized me to abandon said five bales of cotton to government and collect the money due for same. The said lot of cotton was shipped from Young's Point, La., at the request of the owner, by Lt. Col. Jas. Dunlap, A. Q. M., on the 10th day of June, 1863, on board steamer Hiawatha consigned to Thomas H. Yeatman, special agent Treasury Dept., at Memphis, Tenn., and marked "R. M. R." for the purpose being abandoned to the government.

I believe that said Warren Hall is a true and loyal citizen to the United States Government, and that the aforesaid cotton justly and legally belongs to him. Said Warren Hall is now in the city of Washington, District of Columbia.

RICHARD M. ROBINSON. [SEAL.]

Personally appeared before me one Richard M. Robinson, who, upon being duly sworn, says that the facts as set forth in the foregoing statement are the truth to the best of his knowledge and belief.

Given under my hand & seal this 7th day of July, 1863.

CHS. E. HOWE,
Capt., Asst. Pro. Marshal Dist. Memphis.

Receipt to owner for abandoned property.

Received of R. M. Robinson, atty., of the county of Garrard, in the State of Kentucky, five (5) bales of cotton, shipped on the steamer Hiawatha from Young's Point, June 10, 1863, claimed by Warren Hall as the owner thereof, and marked and numbered as follows: "R. M. R.," which, as special agent of the Treasury Department,

request of said Robinson, atty., I have received as abandoned property, to be
d to ——— and disposed of in accordance with certain acts of Congress, respect-
pproved July 13, 1861, May 20, 1862, and March 12, 1863.
d Memphis, Tenn., July 7, 1863.

T. H. YEATMAN,
Ast. Special Agt. Try. Dept.
By ENOCH HOWARD.

1863, 15th June, lot No. ◇53◇, 111 bales cotton, marked R. M. R.

shipped on steamer Hiawatha, from Young's Point, La., by Lt. Col. Jas. Dun-
Q. M., June 10th, 1863, to T. H. Yeatman, Asst. Agt., Memphis, & was received
1 June 15th, and is claimed by R. M. Robinson.
of lading called for 112 bales, more or less. When this lot arrived here it was
d that 90 bales was marked R. M. R., 16 bales no marks, & 5 bales no marks.
amination 58 bales was found to be marked R. M. R. on the edge.
of the 58 was branded "Araby" No. 110 on the end, 53 bales have been unbaled,
his 111 bales was obtained from Warren Hall, and is to be abandoned to the gov-
nt by R. M. Robinson as agent for said Hall. Mr. Robinson has not yet pro-
any papers showing his authority to abandon cotton for Warren Hall.

111 bales are all marked now R. M. R. ◇53◇, as per bill of lading.

it	560 00
ll & Co.'s bill of chgs	493 30
	$1,053 30

une. Shipped this lot on steamer John Warner, consigned to W. P. Mellen, St.
Mo.; 5 bales of this cotton, claimed by Warren Hall, is marked { W. H. / R. M. R. }.

CIN., *April 16th*, 1864.

P. MELLEN, Esq.,
Supg. Special Agent Cinnati.:

SIR: I represented to Col. R. M. Robinson and J. J. Mitchell, esq., as well as
, that any cotton which they would abandon to the Government of the U. States
gh the Treas. Dept., if the same was abandoned in good faith, by loyal and well
ed citizens thereof, would be received by me as an agent of the Treasury Dept.
rward to the supervising special agent to be disposed of, who would, after de-
g all proper charges and expenses, pay over the proceeds to them in a reasonable
All cotton abandoned by the said Robinson & Mitchell, or either of them, and
ed and forwarded by me, was with that understanding. For further identifica-
f the several lots of cotton abandoned by said Robinson & Mitchell, I refer to
andonment papers, and my letter to Wm. P. Mellen, esq., supg. special agent,
Nov. 19th, 1863.
Very respectfully,

TH. H. YEATMAN,
Asst. Sp. Agt. Try. Dept.

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1605.

THERESA SUMMERS.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4708.]

Committee on War Claims, to whom was referred the bill (H. R. 4708) for e relief of Theresa Summers, widow and administratrix of Benjamin ummers, deceased, submit the following report:

he facts of the case are clearly and concisely stated in the affidavit heresa Summers, which is made a part of this report. Said affida- is as follows:

Affidavit of Theresa Summers.

TE OF MISSOURI,
County of Johnson, ss:

ersonally appeared before the undersigned, a notary public in and for the county State aforesaid, Theresa A. Summers, of lawful age, who, being by me duly sworn, declare and say that she is the widow of Benjamin Summers, who died in John- County on the 5th day of May, 1878; that she has resided in Johnson County since summer of 1864; that in October, 1864 (or about that time), her husband being nt in the Union Army, she sent her son Henry to water the horses at a branch ut three-fourths of a mile from the house, and two of the horses, to wit, a black e and a sorrel mare, were taken from him by a command of Federal soldiers who e passing through the county in pursuit of the Confederates under Price (it being ing what was known as the Price raid). I went to the command and spoke to one he officers about taking the horses, and wanted him to give me a receipt or voucher them; he informed me that he had no authority to give me a receipt for them, but I should be well paid for them, and that for me to see the commander in regard to I went the next morning about ten miles to see him, but the commander had e, and I did not see the officer. I think that there was about one regiment of sol- s, as near as I can tell. As soon as my husband returned home he made out a m for said property, and employed a claim agent in Sedalia, Mo., T. W. es by name, to prosecute said claim, and made out all the papers and proof re- red in the case and had the property appraised by citizens of the neighborhood who e acquainted with the property and the value of the same. We sent all the papers proof to Mr. Moses. Some time afterwards we were informed by a letter from Mr. es that he had placed the claim in the hands of Col. John M. Richardson, of Spring- l, Mo., who he said would give the matter prompt attention. We supposed that claim had been filed in the Quartermaster-General's Department at Washington y, D. C., for settlement until since the death of my husband, when we wrote to ator F. M. Cockrell, of Missouri, who informed us that the claim had never been l with the department. We have written to Colonel Richardson in regard to it, could never obtain any answer from him. I think it was through neglect of Mr. W. Moses or Colonel Richardson that the claim had not been filed with the Quar- master-General. I do not know the name of any of the officers or command who

took the horses. I know they were Federal soldiers, as they were in uniform and said they were Union troops.

THERESA A. SUMMERS.

Subscribed and sworn to before me this 25th day of February, A. D. 1880.

WILLIAM E. CHESTER,
Notary Public, Johnson County, Missouri.

The facts of the case are further satisfactorily proved by the affidavits of S. Henry Summers, the son of Benjamin and Theresa Summers, who had the horses in charge at the time of the taking; and also by the affidavits of Thomas D. Tweedy, one of the soldiers belonging to the command that seized the horses. He further states that the horses were afterward turned over to the quartermaster when the command reached Springfield, Mo.

The claimant used due diligence in prosecuting the claim, as proved by the testimony of Theresa Summers and letters of said J. W. Moses.

In view of the facts of this case, your committee believe the claimant entitled to the relief asked, and recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1606.

E. & W. BUDER.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 3250.]

The Committee on War Claims, to whom the claim of E. & W. Buder (bill H. R. 3250) was referred, respectfully report:

That the letter filed in the claim from petitioner and accompanying papers show that the Sixteenth Army Corps broke into their window and stole about $1,421 worth of watches, &c., the property principally of others.

The government is not responsible, and cannot afford to make good such losses, even if fully proven. This has been determined so often that citation of authority or reference to cases is wholly unnecessary. This admission renders it unnecessary to send for the records.

The claim is disallowed.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1607.

MARYVILLE COLLEGE, TENNESSEE.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 2235.]

The Committee on War Claims, to whom was referred the bill (H. R. 2235) for the relief of the trustees of Maryville College, Tennessee, respectfully report as follows:

The bill asks an appropriation of $2,000 for bricks and other material alleged to have been taken and used by the United States Army in 1863 and 1864.

This is but one of a large number of cases of losses to religious, charitable, and educational institutions resulting from the ravages of war. It is to be regretted that such institutions shared the common fate of all other species of property upon the theatre of warlike operations. But the committee are compelled to meet the facts as they are, and harsh as the rule may seem to be, to hold that it is utterly impracticable for the government to repair the damages sustained, and make the waste places green again.

The committee report adversely, and recommend the bill do lie upon the table.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1608.

ROSA VERTNER JEFFREY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill S. 103.]

The Committee on War Claims, to whom was referred the bill (S. 103) for the relief of Rosa Vertner Jeffrey, having duly considered said bill, report the same to the House, without amendment, and recommend the passage thereof.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1609.

ARCHIBALD B. RUE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6377.]

The Committee on War Claims, to whom was referred the bill (H. R. 6377) for the relief of Archibald B. Rue, submit the following report:

That said Archibald B. Rue enlisted in the service of the United States as sergeant in Company F, Nineteenth Regiment of Kentucky Infantry, and acted as such until May 23, 1863, when he was regularly commissioned by the governor of Kentucky as second lieutenant in same company, in place of H. K. Forbis, promoted, and entered upon and discharged the duties of second lieutenant as aforesaid from the time of his promotion until January 26, 1865, when he was mustered out of the Army by reason of the expiration of his term of service; that the reason he was not mustered into service under his commission as second lieutenant was because he was at the front in the field and not in reach of a mustering officer, and his muster occurred as soon as was practicable; that during his service as second lieutenant he was only paid as sergeant.

Your committee are of the opinion that said Rue was entitled to pay of second lieutenant, and report back a bill which allows him the difference between the pay of a sergeant and second lieutenant for one year eight months and three days, and recommend its passage.

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6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1610.

BENJAMIN GRATZ.

JUNE 4, 1830.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 6378.]

The Committee on War Claims, to whom was referred the petition of Benjamin Gratz, of Lexington, Ky., submit the following report:

The petition of claimant was considered by the Committee on War Claims during the Thirty-eighth Congress, and was reported favorably by said committee. Said report, which was submitted by Mr. Hale, is adopted by this committee, and is as follows:

Mr. HALE, from the Committee of Claims, made the following report:

The Committee of Claims, to whom was referred the memorial of Benjamin Gratz, of Lexington, Ky., praying for compensation for property burned while in the occupation of the United States troops, having had the same under consideration, do report:

That it appears from the evidence that a large brick warehouse and hemp factory belonging to claimant, situated in Lexington, Ky., was taken possession of by United States troops, under command of Brigadier-General Gillmore, in the fall of 1862, and used for the storing of hay and corn for the use of the Army.

While so occupied it was, on the 21st December, 1862, entirely consumed by fire.

A board of officers was detailed, by command of General Gillmore, to survey and ascertain the amount of damage done to petitioner, who, after a full examination of the case, and a personal inspection of the premises, report the value of the property destroyed to be $5,200. This report was approved by the commanding general, as appears by the papers submitted.

It also appears that in consequence of the hazardous nature of the use to which the property was applied, it was impossible to get it insured, and consequently it was a total loss to the owner. The valuation made by the board of officers is much lower than it is shown by competent and reliable testimony it would cost to rebuild the property as it was before its destruction. As there is, therefore, no dispute whatever as to the fact that the property was destroyed while in the occupancy of the United States troops, and no reasonable doubt but that such occupancy was the cause of its destruction, the only question for the consideration of Congress is whether the government ought, under these circumstances, to pay the owner the value of his property so taken and destroyed; and your committee are clearly of opinion that it is the duty of the government to do so.

The propriety and justice of paying this and similar claims are so manifest that your committee do not think it necessary to enter into any argument to enforce it. They therefore report the accompanying bill, and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1611.

THOMAS GREEN DAVIDSON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. STEVENSON, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill H. R. 6379.]

The Committee on Private Land Claims, to whom was referred bill H. R. 478 for the relief of Thomas Green Davidson, of the State of Louisiana, respectfully recommend the passage of the accompanying substitute for said bill.

The facts upon which the committee base such recommendation will fully appear in the following communications from the Secretary of the Interior and the Acting Commissioner of the General Land Office, to wit:

DEPARTMENT OF THE INTERIOR,
Washington, June 1, 1880.

SIR: House bill 478, "for the relief of Thomas Green Davidson, of the State of Louisiana," was by you referred to the Commissioner of the General Land Office for information and expression of his views thereon. I have the honor to transmit herewith copy of his report on the subject, under date of yesterday. The papers are returned herewith as requested.

Very respectfully,

C. SCHURZ, *Secretary.*

Hon. A. E. STEVENSON,
Of Committee on Private Land Claims, House of Representatives.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 31, 1880.

SIR: On the 24th instant a copy of bill H. R. 478, first session Forty-sixth Congress, entitled "A bill for the relief of Thomas Green Davidson, of the State of Louisiana," was referred to this office by Hon. A. E. Stevenson, of the Committee on Private Land Claims, House of Representatives, with a request that I furnish my views "as to the propriety of the proposed legislation," &c.

The bill provides for the relinquishment by the United States of all its right, title, and interest in certain lands in Louisiana, described as section 43, in township 5 south, of range 3 east, former Greensburg land district, with an area of 643.34 acres, and the patenting of the tract to Thomas Green Davidson.

I have the honor to state that the land in question is shown upon the township plats of survey as embracing the donation claim of Robert Sibley, being the 320th claim in the list of actual settlers reported by Cosby and Skipwith, district officers at Saint Helena, La., under date of December 24, 1819 (see Green's Ed. Am. State Papers, vol. 3, p. 388), pursuant to the provisions of the act of March 3, 1819, (3 Stats., p. 528.)

This claim was surveyed in 1827 or 1828, under certificate No. 257, and laid down upon the proper township plat in the name of "Robert Sibley," with an area of 617.19 acres. It was resurveyed in the year 1850 or 1851 by Robert C. Brent, United States deputy surveyor, under the same certificate, and appears upon he township plat in the name of "Robert Sibley, under John Albritton." The area by this last survey is that set forth in bill H. R. 478—643.34 acres.

This is undoubtedly the settlement claim of Robert Sibley, No. 320, reported by Cosby and Skipwith, as aforesaid, and was held by this office, in a decision dated June 13, 1876, to be *unconfirmed* (and hence not patentable) on account of the restrictions contained in the third section of the confirmatory act of May 8, 1822 (3 Stats., p. 707).

The land, it is represented, was regularly conveyed to Mr. Davidson on July 7, 1836, by the original settler and his wife, and appears, therefore, to have been in the possession of but two parties for the past sixty-five years, and no disposition of it has been made by the government, according to the records of this office.

I am, consequently, of the opinion that there are strong equities in favor of confirming and patenting said claim, either to the original donation claimant, his heirs and assigns, or to Mr. Davidson directly, as set forth in the bill, if the committee are satisfied from the evidence in its possession that he is the legal representative of the said Robert Sibley.

A draft of a bill is herewith submitted, and recommended as a substitute for bill H. R. No. 478.

Mr. Stevenson's letter and its inclosures are likewise returned.

Very respectfully, your obedient servant,

C. W. HOLCOMB,
Acting Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

O

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1612.

ELIZABETH BURRISS.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

. VOORHIS, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill H. R. 480.]

The Committee on Private Land Claims, to whom was referred the bill . R. 480) for the relief of Elizabeth Burriss, respectfully recommend t the said bill do pass, for the reasons set forth in a communication m the General Land Office dated March 22, 1876, hereto annexed:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 22, 1876.

R: Referring to House bill No. 2353, Forty-fourth Congress, first session, entitled ill for the relief of Charles E. Cate," who claims to be the legal representative of abeth Burriss, filed by you on the 16th instant, I have the honor to make the fol- ing report in connection therewith:

n the 10th of January, 1849, an act was passed entitled "An act to confirm Eliza- h Burriss, her heirs or assigns, in their title to a tract of land" (U. S. Stats. at ge, vol. 9, p. 753), whereby "Elizabeth Burriss, her heirs or assigns," were "con- ed in their claim to a tract of land containing six hundred and forty acres, situate he Greensburg land district, in the State of Louisiana," "on which said Elizabeth riss resided, on and previous to the 3d day of March, 1819, and confirmed by Com- sioner's certificate No. 207, dated the 8th of November, 1819, saving and reserving and all previous confirmations, sales, or grants made by the United States con- ting with the said claim of Elizabeth Burriss."

Said act further provided that "if any sales of all or a portion of said claim have n made by the United States, the said Elizabeth Burriss "should" be entitled to se- t a quantity of land equal to the amount so sold by the United States by legal subdi- ions elsewhere" in the Greensburg land district.

n conformity with instructions from this office, dated May 28, 1849, the surveyor- neral of Louisiana, on the 1st day of October, 1849, issued a certificate of location the said Elizabeth Burriss, her heirs or assigns, for six hundred and forty acres, in l satisfaction of all rights growing out of said law of January 10, 1849, reciting t all of the original location of the Burriss claim was covered by the conflicting ss of claims contemplated by the above-mentioned act.

Said certificate was, on the 14th of April, 1857, located by George W. Watterson, as al representative of Elizabeth Burriss, on the following tracts in the late Greens- rg district, Louisiana, viz: SW. ¼ of sec. 24, W. ½ of E. ½ of sec. 25, NW. ¼ of sec. and W. ½ of E. ½ of sec. 26, all in township 6 S., range 7 E.

Said location was found to conflict with the prior cash entry of George W. Hynson, . 1696, for the E. ½ of section 26 of said township and range, dated July 26, 1853, l patented October 6, 1856.

On the 5th of August, 1858, said certificate of location was returned to the register l receiver at Greensburg, La., with instructions to notify the parties in interest to ke another selection in place of the tracts in conflict, and, when made, to certify the correctness of the location and return the certificate to this office. It does not pear that the location referred to was ever perfected, and the certificate cannot now found in this or the local land-office at New Orleans, La., and until said certificate

is produced and the location perfected as required by the said letter of August, 1858, this office can afford the parties in interest no relief, unless so authorized by Congressional legislation.

So far as this office is advised, I see no good reason why a bill should not pass confirming Elizabeth Burriss, or her legal representatives, in their claim to the tracts located with the certificate hereinbefore mentioned, which were, at the date of the location, free from conflict, and authorizing the Commissioner of the General Land Office to issue a certificate of location in lieu of the tract embraced in the previous location with certificate dated October 1, 1849, which was found to be in conflict with the cash entry of Mr. Hynson, above referred to, said certificate to be located on vacant lands in the former Greensburg district, La., according to legal subdivisions, and providing for the issue of a patent for the tracts so confirmed and located, when such location shall have been completed.

I would respectfully recommend, however, that the confirmation, instead of being to Charles E. Cate, be to Elizabeth Burriss, or her legal representatives, leaving it to the proper judicial tribunal to determine who are the legal representatives of the said Elizabeth Burriss.

I inclose herewith a draft of a bill which I respectfully recommend as a substitute for House bill No. 2353, in the belief that it will more fully subserve the ends of justice and meet the requirements of this case.

The bill filed by you is herewith returned.

Very respectfully, your obedient servant,

L. K. LIPPINCOTT,
Acting Commissioner.

Hon. T. M. GUNTER,
Chairman of the Committee on Private Land Claims, House of Representatives.

5TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1613.

BOEHM BROTHERS, OF NEW YORK.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PHELPS, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6) for the relief of Boehm Brothers, of New York, to refund to them the amount of a duplicate tax paid by them on certain spirits in bond in the city of New York, have had the same under consideration, and submit the following report:

In May and June, 1867, and for some time before and afterward, C. A. Sanborn, of the city of New York, was a distiller of spirits. On two redistillation bonds, dated May 30 and June 5 in that year, he withdrew from a bonded warehouse in the thirty-second district of New York five hundred barrels of spirits, in lots of two hundred and fifty barrels under each of said bonds. The redistillation bonds were conditioned that the product of redistillation should be returned to the warehouse from which it was withdrawn, and on default of such return the parties to the bonds should be held for the tax due on the spirits so withdrawn. The collector for that district, on application made to him for that purpose, extended the time on said bonds, and during the extended time the sureties therein became irresponsible. The collector thereupon required of Sanborn the execution of new bonds or the payment of the tax. In lieu of the execution of new bonds Sanborn borrowed of Boehm Brothers three hundred and fifty-eight barrels of free whisky and fifty barrels of free alcohol and deposited it as collateral with the collector of the thirty-second district, who received and accepted it as such.

Pending the time said bonds had to run under said extension, permission was given to Sanborn by J. E. Messmore, Deputy Commissioner of Internal Revenue, to return the products of the redistillation of said five hundred barrels of spirits to a bonded warehouse in the eighth district of New York instead of the thirty-second district. In full compliance therewith Sanborn did return, in satisfaction of the redistillation bonds given in the thirty-second district, three hundred and two barrels of alcohol to a bonded warehouse in the eighth district.

On receipt of said alcohol the proper revenue officers of the eighth district certified to the collector of the thirty-second district that it was received, and that a good and sufficient warehouse bond had been executed therefor, whereupon the collector of the thirty-second district canceled the redistillation bonds which had been executed by Sanborn.

Boehm Brothers then claimed and demanded the free whisky and alcohol they had lent to Sanborn, and which had been deposited as collateral. The collector refused to comply with the demand, in obedience to instructions from the Acting Commissioner of Internal Revenue, based on the alleged insufficiency of the evidence furnished to prove that the three hundred and two barrels of whisky had in fact been deposited by Sanborn in the warehouse in the eighth district. The instructions of the Acting Commissioner also required the collector to distrain said whisky, unless Boehm Brothers would execute a regular warehousing bond for it. By advice of counsel they executed such bond under protest on the 28th of June, 1868, to save their property from distraint, and in the confident expectation that justice would finally be awarded them by the government.

They have furnished the internal revenue office all possible additional evidence of the deposit of the three hundred and two barrels of whisky, and that fact seems to be established beyond all doubt, but they have, notwithstanding, endeavored in vain to procure from the Treasury Department a ratification of the official action of the collector of the thirty-second district in the cancellation of the redistillation bonds.

In consequence of the delay which attended the action of the department in the determination of the questions involved, Boehm Brothers were obliged, on the 26th day of June, 1869, to pay on their three hundred and fifty-eight barrels of whisky and fifty barrels of alcohol, so rebonded as aforesaid, a tax of $10,234.08, which was paid under protest, and the said spirits were thereupon withdrawn for consumption. They made application to the Commissioner of Internal Revenue for a refund of the tax so paid, on the ground that the spirits on which it had been paid were equitably, if not legally, discharged from bond and taxation by the aforesaid deposit by Sanborn of the product of the redistillation of the five hundred barrels of whisky withdrawn by him from bond on the 30th of May and 5th of June, 1867, and by the cancellation of the said redistillation bonds.

The Deputy Commissioner of Internal Revenue, in a communication under date of May 19, 1871, in response to an application by Boehm Brothers for a refund of said tax, said: "I am of opinion that the parties are entitled in equity to have the amount paid on the spirits withdrawn refunded, and that no action should be taken on the bonds"; and in that opinion the Solicitor, in an indorsement thereon dated the following day, concurred. The Secretary of the Treasury, without passing upon the sufficiency of the proof then on file with reference to the deposit by Sanborn of the three hundred and two barrels of spirits in the eighth district warehouse, non-concurred, and as the Secretary and Commissioner must have concurred to grant relief, the application failed.

In view of the foregoing facts, the committee are of opinion that the relief provided for in the bill, except the provision with reference to interest, should be granted, and therefore report the bill with that clause erased.

16TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1614.

GUSTAVE ELSBERG.

NE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. PHELPS, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 3711.]

e Committee on Ways and Means, to whom was referred the bill (H. R. 3711) for the relief of Gustave Elsberg, of Santa Fé, N. Mex., have considered the same, and submit the following report:

On the 13th day of June, 1863, Gustave Elsberg, of Santa Fé, in the rritory of New Mexico, subscribed for and purchased, through Clark others & Co., bankers in Saint Louis, Mo., $4,000 of United States e-twenty six per centum bonds, second series, issued under the act of bruary 25, 1862, and paid in full for the same. The bonds were sevally of the denomination and value of $500, numbered 22515 to 22522 clusive, with interest coupons attached. They were left for safe-keepg with the bankers from whom they were purchased until the 11th y of June, 1865, when Elsberg took them and left Saint Louis for nta Fé. He arrived at Leavenworth, Kans., on the 14th, and took room at the Planters' Hotel. The bonds, with other papers, were in a all valise. He left his room for a few moments, and on returning to found it had been entered in his absence, and his valise and contents olen. He gave immediate notice of his loss at the office of the hotel, id telegraphed Clark Brothers & Co., requesting them to give public otice, which they did at once through circulars, describing the bonds. otices were also given in all the Leavenworth papers and conspicusly posted about the city, and a reward of $500 offered for the recovery the bonds. Other rooms in the hotel were also entered and robbed the same day.

Just before dark on the evening of that day the boatman who had harge of the ferry over the Missouri River at Leavenworth rowed a spicious-looking man across the river, who had in his possession a alise answering the description of Elsberg's, and when the boat was the middle of the river, which was then high and the current very pid, threw the valise overboard, and it was never, to the knowledge of lsberg, afterwards seen.

No coupons had been detached from the bonds at the time of their ss, and Elsberg was the *bona fide* owner of both bonds and coupons, id has never since disposed of his interest in them, nor made any ssignment, negotiation, or contract with respect to them. The class of onds to which they belonged was called for redemption on the 21st day

of June, 1873, and neither the bonds nor any of the coupons have ever been presented at the Treasury for payment.

The committee are of opinion that relief should be granted on the execution of satisfactory indemnity to the government, and recommend the passage of the bill.

46TH CONGRESS, 2d Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 1615.

HENRY L. NORVELL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill S. 1004.]

The Committee on Ways and Means have had under consideration the petition, the House bill (H. R. 3867), and the Senate bill (S. 1004) for the relief of the sureties of Henry L. Norvell, and report as follows:

It appears from the papers and proof filed with the committee that Henry L. Norvell was, on the 26th March, 1864, appointed collector of internal revenue in what was known as the "old second district of Tennessee," which district included nearly the whole of Middle Tennessee, and embraced thirty counties or more. He continued to hold said office until the 30th June, 1866, when the district was subdivided, and the territory embraced within its limits made into four collection districts, viz, the third, fourth, fifth, and sixth districts. Norvell thereupon was appointed collector of the fifth district, and settled with the United States in full for collections made by him as collector of the fifth district.

Ten years (less one month) after he ceased to be collector of the old second district, viz, on the 1st June, 1876, the government commenced suit, in the United States circuit court at Nashville, against his personal representative (Norvell having died on the 11th September, 1874), and against his sureties on his official bond or their personal representatives. W. R. Elliston, one of the sureties, and the only one who or whose estate is solvent for any considerable amount, died July 4, 1870; James Woods died August 9, 1875, and his estate is insolvent; and M. G. L. Claibire died shortly after the bringing of the suit, to wit, on the 22d November, 1876, and his estate is insolvent. Andrew Hamilton and R. B. Castleman, the only surviving sureties, according to the sworn statement on file, have no leviable property except to the value of about $1,000.

The suit was brought to recover a balance of $95,442.32, alleged to be due the United States, which was reduced by the allowance of credits for abatements to $42,528.79, to recover which latter named sum and interest the suit is now pending. When Norvell went out of office as collector of the second district, all the sureties were solvent. Norvell himself, who, as the proof shows, was universally esteemed as an honest man, died destitute and poor, and by his death his surviving sureties, and the represetatives of those who had died, were deprived of the means of procuring credits or abatement for uncollectible taxes charged on the lists. Norvell *does not seem to* have been charged with having appro-

priated any money to his own use, but for defaults in not making collections. He was charged with the assessments in a very large district, embracing, as before stated, thirty counties or more, and amounting to over $2,000,000. A portion of the time, from the 26th March, 1864, when he was appointed collector of the old second district, to the 30th June 1866, when he ceased to be collector of that district, a state of war existed, and a large portion of his district was occupied from time to time by the Confederate forces, and even after the close of the war the country in that locality was in a very unsettled condition, rendering it exceedingly difficult, if not impossible, to collect the entire amount with which as collector he was charged. The proof clearly shows that during a portion of the time Norvell was collector he could not, without the aid of a military force, have made collections or reached the large number of counties composing his district.

The Commissioner of Internal Revenue has, in a written communication on file with the papers in this case, recommended the prayer of the petitioners for relief to favorable consideration, and your committee close this report by inserting the following extract from said communication:

* * * The balance, as first stated, against late Collector Norvell, was $95,442.32, which appeared to be mostly uncollected taxes, and this office sent an agent to Nashville, after the death of Norvell, who prepared claims for abatement of a large amount of taxes, when the outstanding balance was reduced to $42,528.79. Of this balance, this office has no positive information as to whether it has been collected or not, but from information obtainable it is believed that the larger portion of it represents uncollected taxes and taxes which probably could have been abated as uncollectible, if proper evidence had been presented to this office at the time; but that now, owing to the lapse of time, or the absence or death of officers familiar with the facts, it is impossible to perfect such evidence as will enable the sureties of the late collector to obtain credit in the way prescribed by law and the regulations. While collector of the second district of Tennessee, he collected and accounted for the sum of $2,153,973.37. That late Collector Norvell had unusual difficulties to contend with in the discharge of his duties, especially in the early part of his term of office, is a fact that cannot be denied.

There have been some peculiar circumstances connected with this case, differing from any case that has ever come before this office, and I would therefore recommend the prayer of petitioners to your favorable consideration.

Respectfully,

GREEN B. RAUM, *Commissioner.*

Your committee are satisfied that the sureties of Henry L. Norvell should be relieved from all liability on the bond of said Norvell, and ask to be discharged from the further consideration of the petition and House bill, and hereby report the Senate bill for the relief of the sureties of said Norvell, and recommend its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { R
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FRANK SOULÉ.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordere printed.

Mr. CARLISLE, from the Committee on Ways and Means, submit following

REPORT:

[To accompany bill S. 244.]

The Committee on Ways and Means, to whom was referred Senate bill releasing Frank Soulé, late collector of internal revenue for the fi trict of California, and his sureties from liability on his officia have had the same under consideration, and report:

That the facts upon which the application for relief is based a rectly set forth in the report of the Senate Committee on Finance c 4, 1878, and the same is adopted as the report of this committee. ort is as follows:

The petitioner, Frank Soulé, in this case was collector of internal revenu first district of California for the period of four years and one month, and pray passage of a bill releasing him and his sureties from liability on account of defalcations that are shown to have occurred in the office of said collector du term of service.

The said sureties, C. C. Webb, Ira P. Rankin, J. J. Felt, F. H. Waterman Dows, Samuel Soulé, W. A. Dana, James McM. Shafter, John Center, Horace and Samuel Brannan, by bond to the United States dated January 12, 1867, a for relief from said liability.

The evidence in this case shows that one of the clerks in the office of the computing the aggregate amounts shown on the pages of one of the ass in books, omitted to include the footings of one entire page and added up shor true amount a number of pages in other assessment books, the aggregate of su ted sums being sufficient to cover the amount for which Mr. Soulé is charged default; that such omissions were made for the purpose of deceiving, an in fact deceive, the assessor; that Supervisor Foulke, a witness on the part of fendant in the suit brought by the United States against said Soulé and hi ken to recover the amount of his alleged defalcation, testified that it was m year after the said assessor's books were delivered to him for examination a than a year after Mr. Soulé had ceased to hold the office of collector before said discovered that an embezzlement had been committed; that Mr. Soulé testi he did not receive notice from Supervisor Foulke that an embezzlement had be mitted in the collection of revenues under him (Soulé) until sixteen or seventeen after he had ceased to hold the office of collector; that it was the duty of the to ascertain by proper examination that his books were correct before deliveri up to the collector; that with the limited clerical force allowed him by the ment it was impossible to make such examination of the assessor's books in t of the collector for the purpose of detecting errors; that the clerical force of was so limited that the clerks were compelled to labor upon Sundays, for whi service he paid them at the same rate per diem as was paid them upon ordina ing days, which amounts he charged to the government, but which the office government refused to allow, claiming that there was no authority for such all that he paid between six and seven thousand dollars to detectives and info their legal percentage of the moneys collected for fines and forfeitures, such p having been made after the passage of an act of Congress requiring all money

ered by such fines and forfeitures to be paid into the United States Treasury, and the amounts due thereon to such detectives and informers to be paid out of the Treasury upon the certificates of the collector; that he made such payments in accordance with the law in force when he assumed the office of collector, and before he was officially advised of the change therein by the enactment of Congress referred to; that upon the trial of the suit brought against said Soulé and his sureties the court instructed the jury that the amounts so paid by said Soulé for the extra work performed on Sundays by his clerks, as before stated, and also the amounts paid out by him to detectives and informers as their legal share of fines and forfeitures collected prior to his receiving official notification of the change in the law in relation to the mode of making such payment, should be allowed said Soulé as an offset to the amount claimed by the United States as due from said Soulé; that because of the long delay in advising Mr. Soulé that a balance was found due from him to the United States, such delay covering a period of sixteen or seventeen months, he was prevented from ascertaining which one of his clerks had been guilty of the embezzlement, or to so far fasten the guilt upon any one of them as would justify his proceeding against them by legal process to compel a restitution; that the only mode by which the guilty party could have been discovered would have been by obtaining possession of the receipts given by his collection-clerks to the persons whose names were entered upon that page of the assessor's books, the footing of which was omitted in computing the aggregate amount shown on said book, as also the names of the persons entered upon the pages footed short, as above stated, such receipts being the only evidence to show which of his collection-clerks received the moneys embezzled; that each collection-clerk reported the collection to the bookkeepers by receipt-tags, which were destroyed as soon as the moneys collected were credited to the payer; that when Mr. Soulé was notified of such embezzlement, numbers of the persons of whom the moneys so embezzled had been collected had left the State, and others had changed their residences to other parts of the State, hence making it exceedingly difficult to collect the receipts, even assuming that none had been destroyed; that Mr. Soulé held the office of collector four years and one month, during which time he collected and accounted for nearly seventeen millions of dollars, at an expense to the government computed to be less than one-half of one per cent., including the present claim of the government against him and his sureties.

In addition to this statement of facts, the prayer of the petitioners is suported by the recommendations of the jury, the judge of the United States circuit court, the United States attorney, and the chief witness on behalf of the United States in the prosecution, the United States supervisor of internal revenue. Their statements are as follows:

SAN FRANCISCO, CAL.

"We the jury before whom was tried the case of the United States against Frank Soulé and others, in the circuit court of the United States, at the February term of said court in the year A. D. 1875, hereby certify that upon the trial of said case the United States claimed that there was due the United States from the said Frank Soulé a balance of eighteen thousand three hundred and seventy-three and $\frac{36}{100}$ ($18,373$\frac{36}{100}$) dollars upon his account as collector of internal revenue for the first district of California, as stated by the Treasury Department; that transcripts were introduced by the United States attorney tending to prove that fact; that testimony was introduced by the defense tending to disprove the claim of the United States; that upon the testimony and under the instructions of the court we rendered a verdict in favor of the United States for the sum of eleven thousand seven hundred and forty-four and $\frac{83}{100}$ ($11,744$\frac{83}{100}$) dollars.

"We further certify that, from the evidence introduced upon the trial of the case, it was, and is now, our firm belief that no part of said balance of eleven thousand seven hundred and forty-four and $\frac{83}{100}$ ($11,744$\frac{83}{100}$) dollars arose from any fault or negligence on the part of said Frank Soulé.

"We also certify that it satisfactorily appeared to us that Frank Soulé was collector for a little over four years, during which time he paid over and accounted for to the Treasury Department nearly twenty millions of dollars.

"We therefore respectfully, but earnestly, recommend Congress to relieve the said Frank Soulé and the sureties on his official bond from any liability on account of the aforesaid balance.

"E. G., *Foreman.*
"GEO. H. BELL.
"CORNS. STORM.
"A. ROMAN.
"S. S. MORTON.
"N. C. PADDOCK.
"PHINEAS HASKELL.
"J. SPAULDING.
"CHAS. METZNER.
"THOS. ROGERS."

"I do not think Mr. Frank Soulé received any part of the deficit as above, and so ır, no further, indorse the foregoing.

"G. C. HALL."

"Upon a careful consideration of the testimony introduced on the trial of this ıuse, I am fully satisfied that Mr. Frank Soulé, the principal in the bond, in no way ofited by the d efalcation charged in the complaint.

" LORENZO SAWYER,
" *Circuit Judge.*"

"As United States attorney at the time of the foregoing trial, I will state that I lly concur with Judge Sawyer in the opinion that Mr. Soulé never profited by the ficiency in his said accounts.

"WALTER VAN DYKE."

" As United States supervisor of internal revenue of California, Oregon, Nevada, ., at the time of the above-mentioned trial, and principal witness in behalf of the vernment in the case, I fully concur with Judger Sawyer and Mr. Van Dyke that . Frank Soulé never profited by the defalcation in his accounts.

"L. M. FOULKE."

We think that, from the evidence in this case, Mr. Frank Soulé administered the ties of his office honestly and faithfully, and that he exercised proper vigilance in tecting the interests of the government. The defalcations, which were discovered him nearly seventeen months after he had ceased to hold the office of collector, re occasioned by a subordinate or subordinates in conspiracy, who so successfully l their plans of operation as to deceive all the officers whose duty it was to pass on and examine their accounts, and were only detected long after it was beyond power of the collector to compel them to make restitution. There has been at no e any suspicion of fraud against the said collector, who, on the contrary, is held highest esteem by all who know him and by all the officers of the government who e been engaged in prosecuting frauds against the United States.

Similar cases have been passed upon favorably by Congress, none having more merit n this one; and we may mention the following as similar in principle:

ct of July 19, 1876, for the relief of James Atkins; Statutes at Large, vol. 19, page

ct of July 19, 1876, for the relief of James F. Buckman; vol. 19, page 470.
ct of February 4, 1873, for the relief of John T. Mason; vol. 17, page 723.
ct of April 17, 1872, for the relief of Sherman S. Bailey; vol. 16, page 652.
ct of March 3, 1871, for the relief of Logan H. Roots; vol. 16, page 690.
ct of December 20, 1870, for the relief of Lawrence L. Murry; vol. 16, page 675.
ct of May 4, 1870, for the relief of James L. Ridgely; vol. 16, page 664.

he following officers have been relieved from the default of employés by acts of ngress, to wit: William J. Patton, collector of internal revenue, second district of ansas, $36,081.88; E. B. Pendleton, collector of internal revenue, fifth district of ginia, $26,476.28; J. L. Thomas, jr., collector of customs, Baltimore, $27,540.25; E. Spinner, United States Treasurer, default of Seth Johnson, $37,894.20; also for ault of F. A. Marden, $11,413.97.

he following cases are also similar in principle: E. H. Webster, 16 Stats., 703; R. Bolling, 17 Stats., 768; W. B. Thomas, 18 Stats., 555; Thomas Hillhouse, 18 Stats., ; Willard Davis, 18 Stats., 533.

he Senate has recently passed favorably bills for the relief of collectors also sim- r in principle; and we may mention the cases of James C. McBurney, Senate bill 3; W. L. Adams, S. 997; and J. W. Douglass, S. 55, all of this session.

We therefore recommend the passage of the said bill (S. 2), with an amendment in- ding the name of the said principal, Frank Soulé, relieving him and his sureties m liability on account of said defalcation.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1617.

JOHN P. HALL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6380.]

The Committee on Ways and Means, to whom was referred the memorial of the sureties of John P. Hall, deceased, late collector of internal revenue for the first collection district in the State of Kentucky, have had the same under consideration, and submit the following report:

On the 19th day of April, 1869, John P. Hall was appointed United States collector of internal revenue for the first collection district of Kentucky, and executed his official bonds, conditioned as the law directs.

On the 25th day of April, A. D. 1874, said Hall was fatally stricken with paralysis, and died on the 8th day of May following, at which time, from a subsequent examination of his official accounts, he appeared to be in arrears to the government $3,701.96.

At the time of his sickness and death, A. C. Meyers was his office deputy and cashier; and for a short time acting collector, under direction of the Commissioner of Internal Revenue, and carried the keys and had free access to private and official papers, money, revenue-stamps, and other government property, and to all the books, records, and accounts kept by him.

After the close of the office for the day, on the 28th day of May, A. D. 1874, a fire was discovered in it, which destroyed a portion of the books and papers, and an amount of stamps. Circumstances indicated that the fire was not accidental, and that Meyers, the deputy, was the incendiary. A very careful and thorough examination of the books and papers by the department officials show that up to a few days before his sickness the accounts of the collector were perfectly accurate. The examination of the books and papers remaining after the fire showed Meyers had been guilty of gross criminality in the alteration of the books to conceal and cover frauds which he himself had perpetrated. The apparent defalcation of the collector is satifactorily traced to Meyers's criminal and fraudulent acts after the physical disability of Hall commenced and after his death. It is shown that Meyers did destroy many, and attempted to destroy other, records and papers which would fasten guilt or liability upon him. The collector was of sound integrity, accurate, attentive, and honest.

At the April term, A. D. 1877, suit was brought on one of the bonds of said collector, in the circuit court of the United States for the sixth circuit, district *of Kentucky, and judgment* rendered against a part of

the sureties for the sum of $3,574.78, and interest at the rate of six per centum per annum from March 8, A. D. 1877, which judgment is unreversed. There is also due on another account, shown by Treasury statement, the sum of $127.18.

Meyers was indicted in the circuit court of the United States for the circuit and district aforesaid for embezzlement and defrauding the government of its revenue; was admitted to bail, and executed bond with good surety in the sum of $3,000; absconded before trial, and has never returned. His bond was declared forfeited, judgment obtained against his sureties, and the money paid, as shown by the certificate of the clerk of the court on file with the committee.

Upon these facts, the committee are of opinion that the estate of John P. Hall, deceased, and the sureties in his official bonds, should be exonerated and released from all liability; and they recommend the passage of the bill herewith submitted.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1618.

FRANKLIN TRAVIS.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 688.]

The Committee on Ways and Means, to which was referred the bill (H. R. 688) for the relief of the sureties of Franklin Travis, has had the same under consideration, and reports:

That a similar bill was considered by the committee during the Forty-fifth Congress, and on the 13th day of June, 1878, a report was made recommending that the relief asked for be granted upon the following grounds:

On the 9th day of May, 1867, Franklin Travis was appointed by the President of the United States collector of internal revenue in the State of Tennessee, pursuant to section 9 of the act of June 30, 1864, being entitled "An act to provide internal revenue to support the government, to pay the interest on the public debt, and for other purposes," and executed an official bond in the penal sum of $100,000, in which Joseph McCall, Young W. Allen, Wilburn H. Graves, Eli T. McGill, Priestley E. Parker, Henry McCall, and Gasper N. Bellew were sureties. The condition of the bond was as follows:

"Whereas the President of the United States hath, pursuant to law, appointed the said Franklin Travis collector of taxes under 'An act entitled an act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes': Now, therefore, if the said Franklin Travis shall truly and faithfully execute the duties of the said office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession; and if each and every deputy collector appointed by said collector shall truly and faithfully execute and discharge the duties of such deputy collector according to law, then the above obligation to be void and of no effect, otherwise it shall remain in full force and virtue."

The act of June 30, 1864, and the amendments thereto of March 1, 1865, and July 13, 1866, contained the existing law with regard to the duties of collectors of internal revenue at the time of the execution of the bond. Under those acts the duties of collectors were limited to the exercise of proper diligence and integrity in the collection of tax-lists returned to them by United States assessors, and the payment to the government of the amount of those lists less deductions for the insolvency of persons against whom they were made, and to the proper disposition of two months' supply of stamps denoting the tax on fermented liquors commonly called and known as beer-stamps. Their liability was measured by the faithful discharge of those duties.

On the 20th day of July, 1868, Congress passed an act by which internal-revenue taxes were imposed on distilled spirits and tobacco. This essentially changed and materially increased both the duties and liabilities of collectors. In addition to their preceding duties they thereby became depositories of a large amount of public property, with the value of which they were charged, and of which they were obliged to be practically insurers for the government, a large portion of which, before being entitled to credit therefor, they were required to trust to other officers, known as gaugers of distilled spirits. The twentieth section of this act so far recognized this as an additional responsibility that it *provided for it additional* compensation. The one hundredth

section provides that "the collector shall be charged with all the articles which may have been deposited under the provisions of law in any warehouse in his district and under his control"; and under another provision of the same act those warehouses are required to be placed in charge of another and entirely distinct bonded officer, known as a storekeeper. And by section 53 it is made the duty of collectors to collect and retain to the end of each month, and then disburse, certain fees belonging to gaugers and inspectors.

No default by the collector occurred under the law existing at the time of the execution of the bond, but he made default under the act of July 20, 1868, and the question arises whether his sureties are legally reponsible for that default, and, if not, whether Congress should grant them the relief contained in the bill before the committee.

A suit was instituted by the government on said bond against all said sureties except Joseph W. McCall, in the circuit court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof, at the November term, A. D. 1873, and against said Travis and said Joseph W. McCall at the November term, A. D. 1876. These suits were prosecuted to final determination in that court and judgments obtained against all the defendants, the court sustaining demurrers to the pleas of the sureties in which they averred their non-liability for a default of their principal made under the provisions of the law of July 20, 1868.

The defendants filed bills of exceptions for the purpose of removing the causes to the Supreme Court of the United States for final adjudication, but were so reduced in their pecuniary condition as to be unable to obtain sureties in the bonds required to enable them to prosecute the litigation, and were consequently obliged to abandon the attempt to obtain redress in the court of last resort, and are now entirely without legal remedy.

There is nothing in the record or otherwise before the committee from which it can be inferred that any of the sureties had knowledge of the existence of that act or consented to be responsible for any default by Travis that he should make under it.

It was decided by Lord Chief Justice Hale and his learned associates of the King's Bench, in the case of Lord Arlington *vs.* Merricke, reported in 2 Saunders, that "the condition of a bond should refer to the recital, and if the condition was larger than the recital it should be restrained by it."

This was a suit on the bond of a deputy postmaster who was appointed for six months. He was retained in office beyond that time and made default after the expiration of the original term. The condition was for the faithful discharge of his official duties "for and during all the time he should remain in office"; and the court held that the surety was only liable for the period named in the original commission.

This is a leading case on the subject, and seems to have established the rule of the common law, which appears to have been substantially followed by the English courts to the present time.

In the comparatively modern case of Farr *vs.* Hollis, 9 Barnwell and Creswell, Bayley, J., said:

"The bond speaks at the period of time at which it was executed. If an attempt has been made to charge the obligor with money received in the discharge of duties imposed on him subsequent to the date of the bond, I should have thought that the bond could not have extended to such duties."

In the multitude of adjudications by the State and Federal tribunals in this country, the current of authority on the question has not been entirely uniform, but the just principle of the common law laid down by Lord Hale has been substantially preserved in the Federal decisions. Some of the State courts have held that the liability of a surety is not limited to the provisions of the law in force at the time of the execution of the bond, but extends to and embraces subsequent changes made during the incumbency of the principal obligor. It is believed, however, that no well-considered case can be found in which the departure is so wide as to bind a surety, when by subsequent enactment new and different and important duties are created, greatly enlarging the liability of the principal and increasing the risk of the surety without his consent.

In Miller *vs.* Stewart, 9 Wheaton, 680, in an action upon the bond of a deputy to collector for eight townships, who procured the obligee to add another township without the consent of the surety, Mr. Justice Story said:

"Nothing can be clearer, both upon principle and authority, than the doctrine that the liability of a surety is not to be extended by implication beyond the terms of the contract. To the extent, and in the manner, and under the circumstances pointed out in his obligation he is bound, and no further. It is not sufficient that he may sustain no injury by a change in the contract, or even that it be for his benefit. He has a right to stand upon the very terms of his contract, and if he does not assent to a variation of it, and one is made, it is fatal."

The principle was distinctly recognized and reaffirmed in United States *vs.* Prescott, 9 Howard, 83.

In the case of the United States *vs.* Kirkpatrick, 9 Wheaton, 720, Judge Story

cided that the liability of a surety was limited to duties and obligations created by acts passed antecedent to the execution of the bond. This was the case of a temporary appointment to office during the pleasure of the President, and not to extend beyond the end of the next session of the Senate. The tenure of the office was extended without the consent of the surety or the execution of an additional bond. The default of the principal was subsequent to the extension, and the law as declared by Lord Hale was adhered to, and the liability of the surety restricted to the original tenure of the principal.

In the case under consideration, the government relied on the authority of The United States *vs.* Powell, 14 Wallace, 474, and United States *vs.* Singer, 15 Wallace, 111. The first of those cases was an action on the bond of a distiller, given under section 7 of the act of July 20, 1868, and executed December 1, 1868, conditioned that the obligor should in *all respects comply with all the provisions of law in relation to the duties and business of distillers.* The court held that the very broad language used was intended to be prospective, and embraced such statutory provisions relating to the business and duties of distillers as might be in force during any part of the time for which the bond was given.

By a joint resolution passed March 29, 1869, distillery warehouses were made bonded warehouses, and the proprietors of them required to reimburse to the United States the salaries and expenses of storekeepers placed in charge of them, and it was held the condition as against the surety extended to such reimbursement. The court, however, said (Clifford, J.), "it must be admitted that any substantial addition by law to the duties of the obligor of a bond after the execution of the instrument, materially enlarging his liabilities, will not impose any additional responsibility upon his sureties, unless the words of the bond by a fair and reasonable construction bring such subsequently imposed duties within its provisions," and it may well be questioned whether with this qualification the doctrine laid down by Lord Hale, Justice Bayley, and Mr. Justice Story, in the cases cited, was either intended to be, or was in fact, at all impugned.

In the latter case of the United States *vs.* Singer, 15 Wallace, 111, the precise question determined in the case of the United States *vs.* Powell was again before the Supreme Court. In this case the bond was executed in January, 1869, and the condition was exactly the same as in the case against Powell, and the court held that it did not extend to the duty of reimbursement to the United States of the salary and expenses of storekeepers under the joint resolution of March 29, 1869. The court say (Field, J.): "The official bond of parties undoubtedly covers not merely duties imposed by existing law, but duties belonging to and naturally connected with their office or business imposed by subsequent law"; thus holding that the duty of reimbursement prescribed by the joint resolution did not belong to, and was not naturally connected with, the business of a distiller, but foreign to it. It is certainly not more disconnected and dissimilar than some of the additional duties and risks imposed by the act of July 20, 1868, upon collectors of internal revenue before that time appointed.

A careful consideration and review of the Federal decisions on this subject leaves in the minds of the committee no reasonable doubt that the sureties of Travis are legally free from liability for the default of their principal, arising out of duties and liabilities imposed entirely by legislation subsequent to the execution of the bond.

While the present committee is not prepared to give its entire assent to the foregoing view of the law governing this case, it is nevertheless of the opinion that there are equitable grounds for relief sufficiently strong to justify the passage of the accompanying bill. It is not proposed to relieve the collector himself from liability, but only his sureties, who, from the nature of the case, could have had no personal connection with any of the alleged defalcations. The defalcation consisted of failures to account for certain internal-revenue stamps with which the collector and his deputies were entrusted under the provisions of the act of July 20, 1868, an act passed, as heretofore shown, after the execution of the bond by the sureties. It appears from the records before the committee that the stamps not accounted for were received by the collector between the 1st day of July, 1870, and the 1st day of August, 1872, and yet no action was commenced by the government against him or any of his sureties until April, 1874, and then suit was instituted against only a part of the sureties, or, rather, the process was executed upon only a part of them. All who were served in that action were then and still are insolvent. Afterwards, on the 1st day of March, 1877,

nearly five years after the last alleged act of defalcation, a suit was commenced against the only solvent surety, Joseph W. McCall, and a judgment was obtained against him for $31,679.44. It does not appear that McCall had any notice of the claim until this suit was commenced. He is a man of very moderate means, not exceeding $5,000 at the outside, and consequently only a small part of this large judgment could be collected by the government, even if it should proceed to the most extreme measures. The committee does not believe that it would be just and equitable, under the circumstances of this case, to exact the payment of any part of this judgment from the only one of the sureties who has any means left, and accordingly the passage of the accompanying bill is recommended.

O

CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1619.

SAINT MICHAEL'S CHIMES, CHARLESTON, S. C.

1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

ARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 4663.]

mmittee on Ways and Means, to whom was referred the bill (H. R.) to admit free of duty one of the bells of Saint Michael's chimes, rleston, S. C., which has been sent to England to be recast, have had ame under consideration, and respectfully report:

bill is based upon a petition from the vestry of Saint Michael's h, setting forth the following facts:

t it has a chime of bells, which were brought from England for it year 1764, when the said State was a colony of Great Britain. lls remained in the church until the evacuation of Charleston in by the British, when they were carried off by their forces, and, t the orders of Sir Guy Carleton, the commander of the British w York, taken to England. Then they were purchased by Mr. ew and returned to the church, where they remained until the ege of Charleston. They were then sent to Columbia in the State th Carolina for safe-keeping, and, having been greatly injured at rning of said city, were, in the year 1866, sent to England to be or repaired. The bells were returned to the said church in the 367, and the duties on them for such reimportation remitted by Congress.

ently, in ringing an alarm of fire, one of the said bells was cracked, e memorialists applied to the leading founderies in this country e it recast or repaired, but were informed that it is impossible to it, except by recasting, and that it is impossible to recast one of e and keep it in harmony with the rest of the bells; and that id bell must be sent to the original founders for recasting.

h these facts established before your committee, and it remaining n question whether or not, under a proper construction of the ex- revenue laws, this bell may not be readmitted under the class of can manufacture, your committee have no hesitation in report- ck favorably the bill and recommending its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1620.

EDWARD S. RUGGLES.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6381.]

The Committee on the Judiciary, to which was referred the petition of Edward S. Ruggles, of Virginia, for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution, having had the same under consideration, would respectfully report the accompanying bill for his relief and recommend its passage.

The petition is hereto annexed and made part hereof.

To the Senate and House of Representatives in Congress assembled:

I hereby respectfully petition that my political disabilities incurred nnder the fourteenth amendment to the United States Constitution may be removed.

I would state that I entered the United States Naval Academy at Annapolis, Md., as an acting midshipman in 1858; resigned in 1861, and entered the service of the Confederate States.

Respectfully submitted.

EDW. S. RUGGLES.

FREDERICKSBURG, VA., *April* 26, 1880.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1621.

JOHN H. FORNEY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6241.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6241) and accompanying petition to remove the political disabilities of John H. Forney, of Alabama, imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the bill back, with the recommendation that it do pass.

The petition is hereto annexed and made part hereof.

To the honorable Senate and House of Representatives of the United States of America:

The undersigned, a citizen of the State of Alabama, begs leave respectfully to represent that he graduated at the United States Military Academy in the year 1852, and in December, 1860, tendered his resignation, which was accepted January 23, 1861. He then entered the Confederate service and took part in the late rebellion, remaining in the army of the Confederate States until the close of the war. He respectfully petitions your honorable body to have his political disabilities removed. And in duty bound will ever pray, &c.

JOHN H. FORNEY.

SELMA, ALA., *May* 13, 1880

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1622.

CHARLES SPALDING.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6296.]

The Committee on the Judiciary, to whom were referred the bill (H. R. 6296) and accompanying petition, to remove the political disabilities of Charles Spalding, of Georgia, imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the bill back with the recommendation that it do pass.

The petition is hereto annexed and made part hereof.

GEORGIA, *McIntosh County.*

To the Senate and House of Representatives of the United States:

Your petitioner, a citizen of said State and county, respectfully represents that prior to 1861 he was a cadet at the Military Academy of the United States at West Point; that subsequently he during the war of the rebellion gave aid and comfort to the armed enemies of the United States, by reason of which he rests under certain political disabilities, which he prays may be removed by your honorable bodies.

CHARLES SPALDING,
Formerly 1st Lieut. Second Regiment U. S. Dragoons.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1623.

J. H. OVERTON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. KNOTT, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6382.]

The Committee on the Judiciary, to which was referred the petition of J. H. Overton, of Louisiana, for relief from the political disabilities imposed upon him by the fourteenth amendment to the Constitution of the United States, having had the same under consideration, would respectfully report the accompanying bill for his relief and recommend its passage.

The petition is hereto annexed and made part thereof.

OPELOUSAS, PARISH OF SAINT LANDRY, LOUISIANA,
April 13, 1880.

To the honorable Speaker of the House af Representatives, and Vice-President presiding over the Senate of the Congress of the United States:

I have the honor respecfully to petition that the disabilities imposed upon me by the fourteenth amendment of the Constitution for participation in the recent civil war in our country may be removed.

J. H. OVERTON.

○

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1624.

GREEN CLAY SMITH.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. ROBINSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4069.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4069) providing for the relief of Green Clay Smith, and for other purposes, have had the same under consideration, and now submit the following report:

Green Clay Smith was appointed superintendent of Indian affairs in Montana Territory, and as such officer gave a bond with sureties, on the 30th day of April, 1867, in a penalty of $50,000, to the United States. Upon settlement of his accounts he was found to be in default to the government in the sum of $28,854.58. Suit for the recovery of this sum was commenced against the principal in the United States circuit court for Kentucky September 13, 1876.

In answer to an inquiry made by the committee, Hon. Kenneth Raynor, Solicitor of the Treasury, makes the following statements in reference to the suit against Mr. Smith:

By section 957, the court is required to grant judgment at the return terms, upon motion, unless the defendant shall make oath that he is equitably entitled to credits which have been submitted to and rejected by the accounting officers. Without doing this the case was continued, upon the request of the defendant, by this office at the October terms 1876, '77, '78, and '79.

On the 28th of February, 1879, I refused a further request made by Mr. Smith for a continuance for one year. The reason assigned by him was that he had not been advised of the rejection by the accounting officers of certain claims made by him for credits. I consented to another continuance for one term, and subsequently I had a statement of differences in the account and a copy of all rejected items sent to the United States attorney for Kentucky for delivery to Mr. Smith, to prevent the defendant setting up this reason at the October term, 1879. The United States attorney acknowledged their receipt and stated that he had notified Mr. Smith's attorney to call and obtain same, but no attention was paid to the notice; that every opportunity had been given defendant to examine papers; that no defense will be made to the suit; and that, in his opinion, Mr. Smith wished only for delay.

On the 29th of September last, in compliance with a request of Mr. Smith, on the ground that a bill was pending in Congress for the relief of said Smith, I authorized the United States attorney to continue the case till the April term, 1880.

On the 25th of February last the United States attorney telegraphed, asking if he should continue the case again. I replied, instructing him to try the case without further delay.

On the 25th of June 1875, suit was commenced in the United States circuit court for the eastern district of Michigan against George A. Fitch, surety, and resulted in a judgment by default for $37,501.31. Execution was issued and returned "*nulla bona.*"

On the 21st of January, 1879, a suit was also commenced in the United States circuit court for the southern district of Ohio against Thomas McCullough, assignee of Thomas N. Stilwell, surety, which is now pending. Prior to its institution the attorney for McCullough requested that the suit in Kentucky be pressed to a judgment, and no steps taken *against his client.*

Reference of his request was made to the United States attorney for that district, who replied, stating that "if the suit pending in Kentucky would determine all matters in controversy between the government and the assignee, there would be good reason for awaiting its result, instead of instituting an additional suit. The only reason for awaiting would be because the one suit would determine all matters, and a judgment in Kentucky would secure a settlement of the claim. I do not understand that anything can be realized on execution against General Smith in Kentucky, and unless Mr. McCullough proposes to pay any judgment recovered there, so far as he has funds in his hands, I can see no reason for waiting until that suit is decided. As I understand the case, the government can realize nothing on the claim except from the estate of Mr. Stilwell, and I do not understand from his attorney that those representing the estate propose to settle any judgment recovered in Kentucky, but would still litigate the claim. No judgment recovered in the Kentucky suit can be enforced against the estate of Stilwell, and unless assurances are given of no further litigation in case of a favorable result there, I do not think the delay requested should be granted.

"Not only is there no offer to submit to the result in the Kentucky suit, but the suggestion is made that if judgment be recovered against General Smith in Kentucky, the claim to priority in distribution of the fund held by Mr. McCullough shall then be submitted to the State courts of Indiana, and, if disputed, shall be litigated there instead of in the United States courts.

"If this claim must ultimately be litigated with Mr. McCullough, there is no reason for delay, but if Mr. McCullough will agree to apply the funds of the estate to the payment of any judgment recovered against General Smith in Kentucky, there would be no occasion for an additional suit here."

As Mr. McCullough's attorney refused to comply with the conditions required by the United States attorney, the suit above referred to was instituted.

While there is no doubt that on the facts the whole amount of the large claim of the government can be collected from the assignee of the surety, it is clear that the suit against him for this purpose cannot be pressed while continuances are granted to the principal, time and again, upon grounds which upon examination are now shown to be hardly tenable.

My opinion, therefore, is that this case should be left to be tried as directed by this office, at the next term of the court.

In view of the foregoing facts, the committee are of the opinion that Congress should not interfere in this matter, but leave the liability of the principal and sureties to be determined in the courts of justice.

They therefore report adversely upon the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1625.

EXTENSION OF MINT AT PHILADELPHIA.

JUNE 4, 1880.—Recommitted to the Committee on Coinage, Weights and Measures and ordered to be printed.

Mr. WARNER, from the Committee on Coinage, Weights and Measures, submitted the following

REPORT:

[To accompany bill H. R. 6383.]

The subcommittee appointed to examine the United States mint at Philadelphia, accompanied by the chairman of the committee and other members, visited the city of Philadelphia on Friday, May 21, 1880, *and, having examined the condition of the mint, submits the following report:*

The mint of the United States was established at Philadelphia in 1792.

The present building, which is a substantial marble structure of Grecian-Corinthian style of architecture, was completed and first occupied in 1833.

The lot on which the building is situated has a front of 148 feet on Chestnut street and extends 204 feet on Juniper and 148 feet on Market street, and has an area of 30,192 square feet. The building itself covers 21,360 square feet, and was originally built in the form of a hollow square, with an interior court. This court originally afforded both light and ventilation, but the necessities for more room have compelled the superintendent to erect within this court additional buildings, until nearly every foot of this square is now occupied by workshops and depositories of the precious metals, cutting off both light and ventilation, and rendering many of the inner rooms dark and unhealthy for the workmen.

The accompanying plot will show the plan of the interior of the building.

The basement is occupied chiefly with the boilers—six in number—engines, several vaults, paint, carpenter, and blacksmith shops, washing-room for sweepings, &c., &c.

The first story contains, besides some offices, the deposit or weighing room, the deposit melting room, rooms of the melter and refiner, the rolling room, with annealing furnaces, the cleaning room, and coining room.

The second story is occupied with offices of superintendent, coiner, assayer, &c.; a cabinet of specimen coins of different nations, the adjusting room, the separating rooms, engraving room, &c.

The Adams Express Company occupy a small temporary wooden structure lately built in the inner court. The superintendent has also been compelled recently to put up an additional frame room near the stack, away from the jar of the machinery, for the adjustment of the scales.

Nearly all the rooms, which were designed when the work to be performed was far less than at present—only a little over $3,000,000 being coined in 1833, while during the fiscal year ending June 30, 1879, there were coined at this mint $23,552,032.50, and during the month of January last there were coined $5,000,000 in gold and $1,350,000 in standard silver dollars and 5,856,000 pieces of minor coins—are small, and now so crowded with machinery that much of the work is done under great disadvantage. The deposit room, for instance, is but 12 × 16 feet, and contains two large scales and often piles of bullion, besides being encumbered with trucks and other appliances for handling and working the metals.

The deposit melting room, in which there are four furnaces, is contracted and poorly ventilated.

The rooms occupied for melting and refining are still more crowded. In this apartment are eleven furnaces, which, with the bad ventilation, resulting in part from roofing over the inner court, make the temperature of the room almost unendurable in hot weather.

The rolling room is so crowded with machinery that the workmen are more or less in one another's way, and work in consequence is done at great disadvantage. In this room is a large engine which drives the machinery, and on one side are the annealing furnaces, which, for want of better ventilation, raise the temperature of the room to a degree uncomfortable and unhealthy for workmen. In the cleaning room adjoining the temperature in summer runs up to 136°.

The coining room on the east side of the building is the most comfortably and the most conveniently arranged for work of any in the building, but even here there is no room for more presses, if they should be needed, and not even room to set up and work a valuable and costly machine for separating light, standard, and overweighted coins.

Of course, the capacity of the mint depends largely upon the proper proportioning of the various parts, as furnaces, rolls, presses, &c.

Your committee was informed by the superintendent that the capacity for melting, refining, rolling, and annealing was not equal to the present capacity of other parts of the mint. But there is no room to add other furnaces or rolls.

THE VAULTS.

Your committee desires to call special attention to the insufficiency and unsafe condition of the vaults of the mint.

By the side of the deposit room, on the first floor, is a small vault, only 8 by 12 feet, with low arch, made of 14-inch brick walls with no lining and with but ordinary cheap iron doors. These walls could be pierced by a strong man with a crow-bar in fifteen or twenty minutes' time. In this vault, at the time of the visit of your committee, was stored about $9,000,000 in gold *for safe-keeping!*

By the side of the refiner's room is another vault about the same size and built in the same way, and often so filled with silver dollars that no room is left for counting the packages. Other vaults in the basement, some of them filled with minor coins, were of like character. Vault room has been made out of closets, and then very often bullion has to be left piled up on the floor of the melter and refiner's rooms for want of space in the vaults. No bank or good business house would be willing to trust to such vaults.

In the opinion of your committee the Superintendent is efficient and worthy of the highest responsibility, but his responsibility is made indeed great by the unsafe condition of the vaults. He is obliged, in

consequence of their unsafe condition, to keep a large guard about the building, which would not be necessary if the vaults were made secure. The cost of this guard is about $1,100 per month, which, if saved, would soon amount to enough to construct adequate and secure vaults.

In the opinion of your committee there is room for but one opinion as to the needs of the Philadelphia mint. That is, additional room and new vaults.

If the building could be extended so as to take from the present building the apartment of the melter and refiner, and afford new vault room, ample space would be left in the present building for all the other work. The different parts could then be so proportioned as to increase the capacity of the mint to almost any desired extent.

This, in the opinion of the committee, would be better economy than the construction out and out of new mints requiring new sets of officers, new outfits, and new sets of appliances; at least until the full capacity to coin has been reached at this mint.

It was stated by Colonel Snowden, superintendent, that with an addition of 25 to 33 per cent. of machinery, and room to work it, he could coin all the gold and silver needed in this country for the next hundred years; and not only that, but he could coin in addition the gold and silver coin of the world, if reduced to a uniform metric coinage.

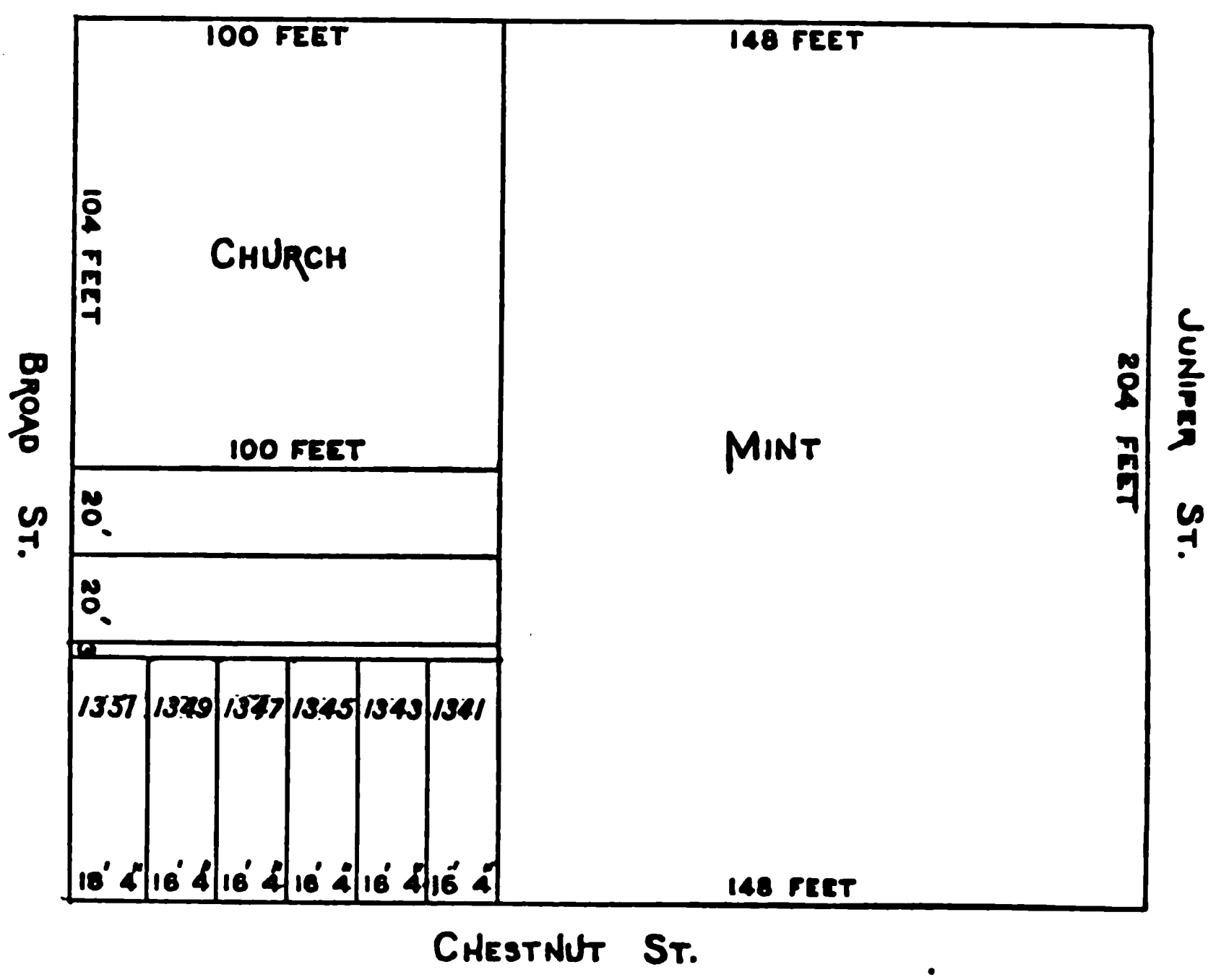
To make the necessary extension, additional ground is required. Adjoining the grounds of the mint, in the same square, is ground now occupied in part by a church building and in part by old business houses, which it is said can be bought entire at from $300,000 to $350,000, or in part, if thought best, for a proportional sum.

The former superintendent of the mint, Mr. Robert Patterson, at one time did purchase all the ground in the square, and offered it to the United States at cost. In the opinion of your committee it was a short-sighted policy that dictated otherwise.

The present superintendent, Colonel Snowden, is of opinion that the church property, which is shown on the accompanying plot, could be at once utilized, at very little cost, for apartments for the melter and refiner.

The committee therefore recommends to the House the purchase of the remainder of the square of ground described in the accompanying plot, marked "B," *provided* the same can be purchased within the limits of $335,000; and if not within said limits, them to purchase the church property at a price not to exceed $135,000.

APPENDIX.


MARKET ST.
100 FEET
148 FEET
104 FEET
CHURCH
MINT
204 FEET
BROAD ST.
JUNIPER ST.
100 FEET
20'
20'
1351
1349
1347
1345
1343
1341
18' 4"
16' 4"
16' 4"
16' 4"
16' 4"
16' 4"
148 FEET
CHESTNUT ST.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1626.

STEAMBOAT L. BOARDMAN.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BLISS, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5153.]

The Committee on Commerce, to whom was referred the bill (H. R. 5153) to change the name of the steamer L. Boardman to River Belle, beg leave to submit the following report:

The petition and copy of enrollment shows that the steamer L. Boardman was built at New York in 1846; that said steamer was almost entirely rebuilt in the winter of 1879, as shown by the affidavit of Joel W. Brown, of the firm of Bullman & Brown, master builders; said steamer being an entirely new vessel in point of fact, as shown by the affidavit above mentioned, your committee are of the opinion that the prayer of the petitioners should be granted, and respectfully recommend the passage of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1627.

YACHT AMERICA.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BLISS, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5304.]

The Committee on Commerce, to whom was referred the bill (H. R. 5304) to authorize the Secretary of the Treasury to change the name of the sloop-yacht America to that of Kelfie, report that they have had the same under consideration.

After examining the accompanying papers and all circumstances, they are of the opinion that the reasons for the proposed change of name are sufficient, and accordingly recommend the passage of the bill.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1628.

THOMAS B. STRING.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 4075.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4075) for the relief of Thomas B. String, having had the same under consideration, respectfully report:

That said Thomas B. String was a second lieutenant in Company L, Eleventh Kentucky Cavalry; that he was captured at Maryville, Tenn., on the 14th November, 1863, and while in prison, to wit, on the 9th March, 1864, a commission was issued to him as captain of said company, but he was never mustered until after his discharge from prison, to wit, on the 10th day of March, 1865, when he was mustered and paid from that date.

Your committee are of opinion that Captain String's capture was a casualty of war that could not be avoided, and should not prevent his receiving the emoluments of the office to which he was promoted, and they therefore recommend the passage of the accompanying bill as amended.

ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
ession. } { No. 1629.

CAPT. R. F. BERNARD.

380.—Committed to the Committee of the Whole House and ordered to be printed.

RELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6384.]

mittee on Military Affairs, to whom were referred the papers for ief of Col. Reuben F. Bernard, have had the same under consid-, and make the following report:

cts in this case and the reasons that have governed the com- its action are given in a letter addressed to the committee by ıtant-General of the Army. The following is the letter:

On January 5, 1862, Col. E. R. S. Canby (subsequently brigadier and ma- l) then commanding the Department of New Mexico, issued an order (copy assigning R. F. Bernard, who was then first sergeant First Cavalry, to duty second lieutenant, and it appears that he performed the duties of such ccordance with the requirements of the order. On September 15, 1862, Ber- appointed by the President second lieutenant First Cavalry, and was paid as that date.

he law and regulations, the appointment of an officer in the Army does not prior to its date. The order of General Canby, assigning Sergeant Bernard, ral other meritorious non-commissioned officers, to duty as lieutenants was d to be for the interest of the service, in view of the scarcity of officers in ment at that time. Captain Bernard has been continuously in service since al appointment and has a good record; and he is justly entitled to pay for ndered under orders of superior authority, which he was bound to obey. e been other similar cases in which relief has been afforded by Congress. action in this case is therefore recommended; but as Captain Bernard re- y as an enlisted man during the period specified in the bill, it is advised that e added, providing that the amount so paid shall be deducted from the sum l by the bill.

y respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

[General Orders No. 1.—Extract.]

HEADQUARTERS OF NEW MEXICO,
Fort Craig, N. Mex., January 5, 1862.

* * * * * *

ollowing non-commissioned officers, heretofore recommended for promotion, d to duty as acting second lieutenants. They will rank according to the heir warrants, and, until the decision of the President is made known, will and respected accordingly.

* * * * * *

Sergeant Reuben F. Bernard, first cavalry.

* * * * * *

second lieutenants * * * Bernard * * * will report to the com- the Southern Military District.

r of Colonel E. R. S. Canby, commanding.

W. J. L. NICODEMUS,
Captain Twelfth Infantry, A. A. A. General.

mmittee therefore recommend the passage of the bill herewith *d.*

'H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1630.

WALKER A. NEWTON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

r. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3491.]

he Committee on Military Affairs, to whom was referred the bill (H. R. 3491) for the relief of Walker A. Newton, having had the same under consideration, respectfully submit the following report:

Walker A. Newton was appointed a second lieutenant in the Thirty-ourth United States Infantry 17th August, 1867, and served with his ompany and regiment at various places in Georgia, Mississippi, and ouisiana, until the consolidation of the Eleventh and Thirty-fourth egiments to form the Sixteenth Regiment, when he was left out, and laced upon waiting orders by General Orders No. 4, Headquarters ixteenth Infantry, April 12, 1869. By General Orders, Adjutant-Gen-al's office, No. 59, July 14, 1869, he was transferred to the Thirteenth egiment Infantry, and ordered to join his regiment, which order was voked by Special Orders 202, August 20, 1869, Adjutant-General's ffice, and he was directed to report in person to the commanding gen-al, Department of Louisiana.

His arrest and trial upon a charge of selling two sets of pay accounts as ordered by letter from the Adjutant-General's Office, August 23, 69, addressed to the commanding general, Department of Louisiana. does not appear anywhere that said Walker was ever arrested or ed for said charge. But in his affidavit on file he admits that two y accounts were out for the month of June, 1869, and attempts an ex-nation therefor, which your committee think needs confirmation by oof. He further admits that he afterwards took up or paid one of d pay accounts.

On the 2d September, 1869, he reported from Holly Springs, Missis-ppi, that, having received no order, he should immediately start for ashington; but there is no record evidence that he did come to Wash-gton, and the next order found is the order General Order 95, War epartment, Adjutant-General's Office, Washington, July 25, 1870, hich says:

Under the provisions of section 17 of the act approved July 15, 1870, the following med officers are, by direction of the President, hereby dropped from the rolls of the my for desertion.

* * * * * * *

Second Lieutenant Walker A. Newton, unassigned, absence since August 20, 1869.
By order of the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

Section 17 of the act *referred to fully* authorizes the President to drop

any officer who had been absent from duty for three months without leave.

Lieut. Walker A. Newton was ordered, 23d August, 1869, to report to commanding general of Louisiana, and failed to do so, or to show by proof that he did so; upon the contrary, he reports from Holly Springs, Mississippi, 2d September, 1869, that he should start for Washington; but he does not show that he ever applied for orders, nor does he prove that he ever rendered any service thereafter. And your committee are of opinion, and so report, that between the orders of August, 1869, and the orders of July, 1870, eleven months, he had ample time and opportunity to report his whereabouts. The bill asks his reinstatement in the Army, with pay from August, 1869. Your committee think this would be a great injustice to the officers in the Army who have been always on duty, and cannot consent to favor such a proposition. The fact of his long absence, coupled with the charge of selling or disposing of the two accounts, we think justified the President in dropping him from the rolls, and your committee report the bill adversely and recommend that the same do not pass.

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1631.

OME FOR INDIGENT SOLDIERS AND SAILORS AT ERIE, PA.

NE 4, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Ir. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5093.]

he Committee on Military Affairs, to whom was referred the bill (H. R. 5093) to authorize the United States to accept title to certain lands in the city of Erie, Pa., and to establish a home for indigent soldiers and sailors, having had the same under consideration, and given the matter much attention, respectfully report:

This is a proposition of the State of Pennsylvania to donate to the nited States 102 acres of land in the city of Erie, Pa., known as Garson Hill, upon which is a large and commodious building erected by aid State at a reputed cost of $110,000 for a marine hospital, upon conition that the United States shall convert the same into a national oldiers' home, and maintain the same for the benefit of such soldiers nd sailors as are now or may hereafter be in destitute or indigent circumstances, so as to make them wholly dependent upon public charity for upport, and who are excluded from other national soldiers' homes under he rules and regulations governing the same.

Your committee are advised that there are of this class of soldiers now i the State of Pennsylvania about 700, and in other States probably a ke proportion, thus increasing the number that would be entitled to ie benefits of this home, if established. several thousand, and as age and ifirmities grow upon the soldier the number may reasonably be exected to increase for a number of years to come.

The large and commodious building already erected has ample room r as many as may be admitted for some time to come, and when necesry to enlarge them there is ample room in the 102 acres of land doted.

The building on the grounds is 3 stories high, 186 feet long by 55 feet de, with all necessary apartments for the comfort and convenience of e inmates.

It is estimated that it will require $5,000 to finish up and repair the uildings ready for use and occupation.

Your committee are of opinion that the proposition of the State of ennsylvania is both liberal and praiseworthy, and as the United States overnment has expended large sums of money for soldiers' homes for ie care and protection of soldiers not included in the class intended to e benefited by this bill, they think it would be both wise and proper or the government to accept the proposition, and recommend the doption of the bill as amended in the preamble, in the first preamble by inserting 102 acres instead of 65 acres, and in the third preamble by inserting the word "*wholly*" *and striking* out "or private."

l CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
d Session. } { No. 1632.

GETTYSBURG BATTLE-FIELD.

E 4, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

JOHNSTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5479.]

Committee on Military Affairs, to whom was referred the bill (H. R. 479) to complete the survey of the Gettysburg battle-field, to provide r the compilation and preservation of data showing the various positions f troops at that battle, illustrated by diagrams, submit the following eport:

he committee have carefully considered the subject of this bill, and y concur in the views of the Committee on Military Affairs of the ate (Senate Report No. 382, second session Forty-sixth Congress), l adopt the same as the sense of this committee, in the following tement of facts and conclusions:

he Chief of Engineers in his report states that "the data from which the positions oops were placed upon the engineer map of the battle-field of Gettysburg, recently lished, were collected by Mr. John B. Bachelder, and, as stated on the map, are l official reports, consultations on the field, private letters, and oral explanations ne officers of both armies.

The data are not therefore in the possession of the War Department. The collec- is of the most perishable nature, is possessed by no one else than Mr. Bachelder, unless compiled by him, will, at his death, be lost to history."

appears that Mr. Bachelder, having the advantage of a military education and of history, went to the front early in 1862, more than a year before the battle of ysburg, to be in position to collect data when the most important battle of the was fought. After working up the details of several engagements, he reached the le-field of Gettysburg before the dead were buried, remaining for eighty-four days, ing plans of the field, visiting the wounded in hospital, and by permission taking convalescent officers over the field, by whom their positions and movements were ted out and established. During this period books full of notes from these actors secured within a few weeks of the battle. With this information and sketches secured, he visited the Army of the Potomac, spending the winter of 1863–'64 in ultations with the officers of every regiment and battery, whose conversations and anations were carefully noted and preserved. At the close of the war Mr. Bach- r issued an invitation to the many officers whose acquaintance he had made to Gettysburg with him for historical purposes, which was accepted by over one sand, forty-nine of them generals commanding. From the acquaintance thus ted has resulted, during the past sixteen years, a most valuable correspondence rding the battle of Gettysburg.

ne Secretary of War, having ordered the preparation of maps of the battle of Gettys- ; and secured the most careful surveys for that purpose, found that the official rts of the battle were so incomplete and conflicting that the positions of troops d not be located from them; whereupon, on the following recommendation of the f of Engineers, Mr. Bachelder was employed to do the work:

Mr. Bachelder, as you are probably aware, is preparing a history of the battle of ysburg. The *information he has collected* concerning that battle is extraordinary

n amount and correctness. So far as I am able to judge, there is no battle of any war respecting which so many truthful accounts, so many exact details, have been collected and compared with each other from every source, from the private to the generals commanding the armies. * * * I have been acquainted with the thoroughness of Mr. Bachelder's researches since the winter of 1863–'64, when he visited every part of the Army of the Potomac. I have since gone over the battle-field with him and had many interviews with him concerning it."

Mr. Bachelder was engaged by the War Department to do the work, and after years of patient examination of the mass of material thus collected, the maps were completed, representing six phases of the battle; and were approved by the Secretary of War.

Immediately upon their distribution letters were received from all sections of the country by the Chief of Engineers (several of which have been transmitted by the Secretary of War) urging the importance of compiling in text form the knowledge which the maps embody. General Hancock writes:

"Is it not wise to seize the occasion to have such details published while it can yet be done?"

General Longstreet says:

"I beg leave to suggest the importance of a thorough narrative of events connected with the battle, as well as a detailed analysis of the tactical moves upon the field."

General Warren says:

Unless this is compiled and arranged by Mr. Bachelder, it will be lost to history

General Fitzhugh Lee says:

"I know I express the sentiment of those on my side in the operations referred to when I say that we hope every facility will be given Mr. Bachelder to prosecute the purpose of compiling them."

General Hunt says:

"Much of the information, collected and noted under unfavorable circumstances would be undecipherable and unintelligible for others, and under no circumstances could another make as good use of the material as the man who collected it."

Many other letters of like character, together with nineteen memorials to Congress presented from the several States, asking that this be done, of which the following are specimens:

One from ex-officers of the Army of the Potomac, indorsing the value of the material and asking that it be preserved, &c., signed by Generals Hancock, Wright, Slocum, Gibbon, Warren, Webb, Graham, Owen, Cross, Shaler, Barnum, Ward, McMahon, Sargeant, Cogswell, Underwood, Robinson, Neill, Torbert, Carr, Carroll, Wells, Stannard, Tilton, Coxe, McCandless, Selfridge, Brigham, Carman, and many others, with a long list of subordinate officers. And another received from late officers of the Army of Northern Virginia, asking "that the Secretary of War have the data compiled and published in text form," &c., signed by Generals Kemper, Fitzhugh Lee, Maury, Taliaferro, W. H. F. Lee, Echols, Lane, Walker, Bradley T. Johnson, Anderson, Hunton, Payne, Terry, McComb, Allen, Alexander, Holtzclaw, Fry, and many other officers of all ranks.

There are also over one hundred and fifty letters from military men, college professors, directors of historical societies, public libraries, and other literary institutions urging the importance to the history of the country that the maps be accompanied by a text description, and the knowledge which they embody be placed within reach of the public.

Your committee have also examined a series of diagrams representing the battle from its commencement, prepared by Mr. Bachelder, indicating the changing positions of regiments and batteries by dotted lines and arrows, the whole forming a most comprehensive representation, alluding to which the Chief of Engineers says in his report:

"Most of the commands made frequent changes and took up different positions that do not appear on the (engineer) maps, but which could be represented on diagrams by Mr. Bachelder from data in his possession, which would complete the illustration of the text. He could prepare the tactical moves at Gettysburg in more detail probably than has heretofore been done for any battle."

The Secretary of War, in his letter accompanying these papers, says:

"The views of the Chief of Engineers are concurred in, and it is recommended that Congress provide in some adequate manner for the publication of the data in question."

Your committee, therefore, believing that this material is too valuable in the military history of the country to be lost, report favorably on the bill and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1633.

RIGHT OF WAY TO GROTON, CONN.

JUNE 4, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. JOHNSTON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6099.]

The Committee on Military Affairs, to which the bill H. R. 6099 was referred, respectfully reports:

The object of this bill is to grant to the people of the town of Groton, Conn., a right of way on the tract of land of the United States on which Fort Griswold stands. The proposed road is to be on the strip of ground at the edge of the United States tract adjoining the village. It has long been used as a common way, but in bad weather is well-nigh impassable. The privilege asked is that of making a good road where there is now a bad one. As such a road would be a convenience to the government by making easy access to Fort Griswold, and the town of Groton is to defray the expenses of constructing it, your committee recommends the passage of the bill.

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CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
l Session. } { No. 1634.

JAMES H. CONLEY.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

WHITTHORNE, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5012.]

e Committee on Naval Affairs, to whom was referred the bill (H. R. for the relief of James H. Conley, beg leave to report the same back e House with a recommendation that it do not pass.

e committee, in the absence of any proof to support the claim men- d in the bill, referred it to the Secretary of the Navy for informa- who replied in substance that the claim was without merit. This is herewith submitted as a part of this report, and as such asked printed.

NAVY DEPARTMENT,
Washington, May 5, 1880.

: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, ing House bill No. 5012, for the relief of James H. Conley, and requesting infor- n in regard to the patent ship's-ladder mentioned therein.

eply, I have to state that the department has no knowledge of the ladder re- to in the bill having ever been used on board of any of the United States ves- f war, and does not believe that it possesses sufficient merit to warrant its ion for use in the Navy.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

n. W. C. WHITTHORNE,
Chairman Committee on Naval Affairs, House of Representatives.

r the reasons therein stated the committee report adversely on said

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H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1635.

SAND BARS AND DEPOSITS NEAR MARE ISLAND.

: 4, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

WHITTHORNE, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany. Ex. Doc. No. 31, second session Forty-sixth Congress.]

Committee on Naval Affairs, to whom was referred Ex. Doc. No. 31, *cond session Forty-sixth Congress, being "letter from the Secretary of e Navy in answer to resolution of the House of Representatives of Jan-ry* 21, 1880, *for any and all information in possession of his depart-ent relating to the formation of bars and deposits of mud, sand, and ·avel at or near Mare Island, California," having had the same under nsideration, beg leave to report:*

hat, in their opinion, it is proper and necessary that the House should horize and direct that at least a part of the Naval Committee of the ıse should, in connection with a board of competent officers of the ·y to be selected for that purpose, examine and inspect the condi-ı of the navy-yard at Mare Island, especially in regard to the matters gested in the letter of the Secretary.

t will be seen by reference to that letter, Ex. Doc. No. 31, aforesaid, t the usefulness of said navy-yard in the future is very seriously :atened by "the formation of bars and deposits of mud, sand, and vel in the bay at or near Mare Island." These formations are as-)ed by some to artificial causes; by others to natural ones. Again, ; claimed by some that this formation may be easily arrested; by ers it is urged that unless very comprehensive and costly as well as edy preventives are applied it cannot be done. Says the Secretary he said letter—

> ith regard to the question whether in my opinion such formations or deposits be permanently prevented, I beg leave to say that it is a difficult question to ·er, and one which cannot be answered without a thorough and careful examination he premises by a board composed of the most able and eminent engineers of the ıtry.

[e further says that—

> is a question of vast magnitude; one involving the interests of one of the largest most important enterprises of the country—the great mining interests of the West.

he Committee on Naval Affairs so appreciate it, as does another mittee of this House, which has reported a bill directing an examin-n of the question *in its more general* bearings, and outside of its direct *ience on the navy-yard. And* hence your committee, having in view *pecial interests under their* charge, and in this connection brought

directly before it by the order of the House in the reference of the document aforesaid, confine its consideration and recommendation to the direct question of the effect of the alleged formation of bars in the bay at or near Mare Island navy-yard. The government has already expended large sums of money on this yard. To make it such a navy-yard as the military and commercial interests of the United States demand will require a very large sum of money. The total cost will exceed twelve million dollars.

With the knowledge that the permanent usefulness of this yard is so seriously threatened, and that the question whether the causes of this apprehension can be permanently removed or avoided, the committee deem it to the interest of the government that these matters should be inquired into, to the end that in the future such appropriations as may be called for in the future to protect naval interests on the Pacific coast may be intelligently considered and determined with reference to the best interests of the government.

Since said letter of the Secretary was presented to the House, the committee have learned from the Secretary that he prefers that the examination of the bay, &c., at or near the Mare Island navy-yard shall be made in the manner indicated by the resolution submitted with this report, and which resolution the committee recommend should be adopted by the House.

Resolved, That a subcommittee of the Committee on Naval Affairs of the House of Representatives, to consist of not less than three nor more than five members, be, and they are hereby, authorized and directed to visit the bay and approaches thereto at and near Mare Island, California, and there, in connection with a board of competent naval officers, carefully to examine whether bars of sand, mud, &c., are being formed, which have impaired or may impair the usefulness of said navy-yard, and whether such formations or deposits can be permanently prevented, and of which they will, through said committee, make report to the next session of Congress. Said committee may perform the duties with which they are charged under this resolution during the vacation in the sessions of Congress. And the expenses of said subcommittee shall be paid out of the contingent fund of the House.

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45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1636.

ALBEMARLE AND CHESAPEAKE CANAL COMPANY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GOODE, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5957.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 5957) for the relief of the Albemarle and Chesapeake Canal Company, have had the same under consideration, and submit the following report:

This claim has been fully considered by the Committee on Naval Affairs of the Senate and House of Representatives both in the Forty-fourth and Forty-fifth Congresses. During the Forty-fourth Congress a bill which had been favorably reported was passed through the Senate but failed to pass the House of Representatives for want of time.

Your committee adopt as their own a report made by the Senate committee in the Forty-fourth Congress, as follows:

The Albemarle and Chesapeake Canal Company, as disclosed by the papers, was in process of construction when the war broke out. Much of its capital stock and all of its bonds were held by a Mr. Cartwright and other Northern capitalists. When the government forces obtained possession of that country between Elizabeth River and Albemarle Sound, after many propositions for the United States to advance money to open the canal and keep it in order, all of which failed, the bondholders put it in condition for use, and it was largely used by the War Department, and tolls duly paid by agreement. In October, 1862, a specific contract was made, by which the United States was to allow the present rates on tonnage of vessels and boats in full, less 10 per cent. for all troops, &c.

The canal company was paid on the government vessels up to March, 1863. No payment was made by the War Department for tonnage after April, 1863. The use of the canal by vessels in the service of the Navy Department (upon which the present claim is founded) was not considered by the War Department. The canal company now claim as due from the Navy Department, for tolls, from January 10, 1864, to July 27, 1866, the sum of $4,158, less 10 per cent., making the net claim $3,742.20. The Navy Department refused to pay this claim on account of the act of July 4, 1864, the provisions of which authorized the Quartermaster-General and Commissary-General of Subsistence to examine similar claims, but which have conferred no such power on the Navy Department. While the passage of the act before cited did not, in the opinion of the committee, preclude the Navy Department from passing upon this claim and having it paid (its correctness being easily verified by the records of that department), yet, for the purpose of relieving the case of all difficulty, the committee report the bill and recommend its passage, with an amendment, to wit: add at the end of the bill "subject, however, to the provisions of section 2 of the act of July 4, 1864, entitled, "An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence supplies furnished to the Army of the United States.'"

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1637.

FRANK D. YATES AND OTHERS.

NE 4, 1880.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

R. DEERING, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6385.]

e Committee on Indian Affairs, to whom was referred the bill (H. R. 1282) for the relief of Frank D. Yates and others, have had the same and accompanying papers under consideration, and submit the following report:

This is a bill which authorizes the Secretary of the Treasury to pay id Yates and others the sum of $14,675.85 for transportation furnished d money paid for transportation furnished in the removal of Indian operty and supplies, belonging to the Whetstone Agency, from White ver, Dakota, to their new reservation in Dakota, in the years 1872 d 1873. The following are the substantial facts of the case:

The files of the Department of the Interior show that Agent R. D. sley, of the Whetstone Agency, executed a contract November 5, 1872, r said removal, with Henry Graves, physician at the agency, who had signed for that purpose; the contract was not forwarded from the ency until December 24, same year, and reached the department on e 13th January, 1873, and was, on the 15th of the same month, returned the agent not approved, for the reason the department was of the inion that the agency could be removed with greater advantage in e spring.

Agent Risley returned said contract under date of February 20, 1873 e being in the city at that date), with advice that the move commenced the 28th December, 1872, and that it was utterly impossible at that ne to stop the movement of the agency, for the reason that the Indians sisted on said move, and were then at the new location, for which ason he requested an approval of the contract in question. No further tion was taken by the Indian Office to cause said contract to be ap-oved.

The removal the agent alleged, and doubtless truthfully, to be an gent necessity.

In the month of June, 1873, the department received a voucher, mounting to $33,341.89, in favor of Henry Graves for the removal of e Whetstone Agency.

The evidence shows that the contractor, Graves, performed none of e work of removal himself, but that said Yates and others were em-oyed by the *agent, and did the work* in good faith and at one cent per

pound, which is shown to be a fair price, the actual distance between the old and the new reservation being fifty miles; they received due bills from the agency clerk, which bills show the number of pounds each man freighted; they supposed themselves to be acting directly for the agent under authority from the department. When the removal was completed the agent informed said Yates and others, for the first time, that he had, previous to the removal, concluded a contract with Henry Graves, and that he had given to him a good and sufficient voucher covering the amount due them for their services; said Graves corroborated the statement of the agent, and informed them that he had forwarded the voucher to Washington for payment, and upon the receipt of the money he would pay them, severally, the amount due as per due bills.

It transpired that the agent and Graves were in collusion with each other to defraud the government; the due bills on file show that 1,467,585 pounds were transported, while the voucher represents 3,354,188 pounds had been removed. If the voucher had been paid upon presentation, the contractor, Graves, after having settled with Yates and others, would have had a balance of $18,866.03 to divide between himself and Agent Risley. The department refused to pay the voucher, on the ground that the charge was excessive, and, believing there was an attempt at fraud, ordered an examination into the matter.

Under date of May 4, 1874, the Department of the Interior notified the Right Rev. William H. Hare, chairman special Indian commission, that said commission was continued, and its members directed to revisit the Red Cloud and Whetstone Agencies for certain objects. On the 7th of the same month the department instructed said commission to visit the Whetstone Agency and make a thorough investigation of the facts and circumstances connected with the removal of said agency; what in their opinion should, in justice and equity, be paid, and to whom; also what sum each person is entitled to receive for transportation or other labor connected with the removal.

Commissioner Robert B. Lines, of said commission, was especially charged to investigate the matter and report the result of such examination to the full commission, which he did by examining the several persons under oath who were employed in said removal, and inspected their certificates or due bills, which represented the number of pounds of freight the holder had transported. He concludes the department had acted quite properly in refusing to recognize the Graves contract, and that the contractor had no legal or equitable claim. The said commission recommended that the men who actually did the work were certainly entitled to their pay, whom they mention by name as follows:

Frank D. Yates, entitled to	$9,650 92
Todd Randall, entitled to	2,400 10
E. W. Raymond, entitled to	2,213 90
Stephen F. Estes, entitled to	224 00
Total	14,48[illegible] 92

Which is correctly stated except in the case of F. D. Yates. The due bills filed in his name show that he is entitled to $186 and 93 cents more than the amount mentioned, which changes the total to $14,675.85.

March 18, 1874, the Commissioner of Indian Affairs communicated the facts relative to said removal to the Secretary of the Interior, and recommended that the Graves contract be ignored, as he has no just claim against the government, and that the men who actually transported the supplies, &c., may receive their just dues; that they be allowed the rate of one cent per pound for the entire distance, payment to be made

to the respective claimants. To which the Secretary replied, under date of March 30, same year, as follows:

> By the evidence submitted it is shown that the work of removing the agency was *not* done by Graves, but by "men of the country," to whom he had agreed to pay one cent per pound for transporting the freight the entire distance from White River, which did not exceed fifty miles. * * *
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> The transaction between Agent Risley and Graves, as disclosed by the testimony, is not free from suspicion of fraud, and will be treated as null and void, and the voucher issued to Graves by Risley in the sum of $33,541.89 will be rejected. He, having performed no services in connection with the removal of the agency, has no claim against the government.

By reference to Executive Document No. 151, Forty-fourth Congress, first session, which document is a letter from the Secretary of the Treasury, transmitting estimates of appropriations required by the various departments for the fiscal year ending June 30, 1876, and prior years, under the head of Interior Department, is the following item from the Indian Office: "Fulfilling treaty with Sioux of different tribes; amount due to various parties for transportation furnished in the removal of the Indians of Whetstone Agency from White River, Dakota, to their new reservation in Dakota, in 1872 and 1873, being a deficiency for the fiscal year 1873 and prior years, $14,488.92.

July 14, 1875, a second commission was created to investigate affairs of the Red Cloud Indian Agency, of which Gov. Thomas C. Fletcher, of Missouri, was chairman; he refers to the removal of the Whetstone Agency as follows:

> Yates and the men who actually did the work of moving the agency acted in good faith, so far as I was able to learn from my examination of the men who were about there at the time. They took their teams and hired and paid their men to do the hauling; this they did relying upon the authority of the agent to employ them. The agent represented the government, and the men who did the actual work knew that he had contracted with Graves only *after* they had completed the work of moving the agency to the mouth of Beaver Creek. They thought they were working directly for the government. The evidence I had satisfied me that only *after* the work was done were they informed that Agent Risley had let the entire contract to Graves, and that a voucher had been given Graves for the whole work, and perhaps more too, and that they must look to Graves for their pay. F. D. Yates, Todd Randall, Raymond, and others, who did the hauling, worked in good faith for the government, and the government got the benefit of their labor, and at a price which was shown to be reasonable and fair. The department refused to pay Graves, and properly refused to pay him. But Yates and the men who did the work would be able to recover all they claim in any court upon a *quantum meruit* as against an individual standing in the place of the government. The denial of their legal and equitable rights to Yates and the men who worked there for the government is not only a wrong of which the government ought not to be guilty towards its citizens, but is a policy which has cost millions. What wonder that no man will work for the government as cheap as for a citizen when he is liable to be treated as these men have been? The government never paid anybody for this work.

Representative B. W. Harris, a member of the Fletcher commission, says on the subject of the removal of the Whetstone Agency:

> It was admitted on all hands that the work had been done promptly, expeditiously, and satisfactorily. Yates and his associates, it was said, supposed they were doing it for the government, and would be paid by the government. Yates being the post trader, and then having money at his command to a greater extent than any of the others, paid the others, taking their bills, approved by the agent, Risley, as his security, and thereby assumed the whole risk.
>
> When the work had been done and the liability incurred, and when payment was asked and expected, Risley informed Yates that he had made a contract for the whole work with one Graves, and that in asking him, Yates, and his associates to do the work he had simply acted at the request of Graves; that Graves would pay them, as he had given him approved bills for the whole amount at contract price.
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> * * * * * * *
>
> The commissioners became satisfied that the pretended contract between Risley and Graves was *a fraud, and entered into with* the intent to get out of the government for

their mutual advantage a large profit on the work done by Yates and others. There can be no doubt that the department acted wisely in rejecting the claim of Graves and refusing to pay one dollar thereon. The contract was not only fraudulent, and therefore void, but nothing was ever earned by Graves under it. Yates and others did all the work and earned all the pay, and were employed by the agent, Risley, without notice that he was acting otherwise than on behalf of the Government of the United States. * * *

In view of the foregoing facts, your committee are forced to the conclusion that the claim for removal of the Whetstone Agency is just, and should be paid; they therefore report back a substitute for the bill, with recommendation that it pass.

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1638.

HENRY VOELTER.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

VANCE, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 883.]

he Committee on Patents, to whom was referred the bill (H. R. 883) itled, "A bill to repeal an act entitled 'An Act for therelief of Henry elter,'" approved March 3, 1877, having had the same under consider-on, beg leave to submit the following adverse report, and recommend t the bill do not pass.

he bill proposes to effect two distinct objects, namely, (1) a repeal of act passed March 3, 1877, whereby the Commissioner of Patents s authorized if, upon due hearing, it should seem to him just and per, to renew and extend the patent of one Henry Voelter for an provement in reducing wood to paper pulp; and (2) to declare the ension of the patent made by the said Commissioner of Patents null l void.

he reason assigned for the proposed legislation was that, pending the sideration of the bill, a member of the House of Representatives, by om an objection had been interposed upon a motion to take it from Speaker's table, and who subsequently withdrew his objection, did so er a misapprehension, his supposition being that a favorable report n the measure exhibited to him was that of the House Committee Patents, whereas it was the report of the Senate committee. But n statements submitted by the members of the Forty-fourth Congress were the parties concerned, and upon scrutiny of the official record he Journal of the House, it is the opinion of your committee that the dent was one merely of accidental misunderstanding, not discrediting integrity of the proceedings.

he bill is subject, moreover, to constitutional doubts, as contemplat-action believed to be beyond the jurisdiction of Congress. It is an mpt to deprive citizens of rights of property and vested interests er existing law.

O

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1639.

JOHN P. REYNOLDS.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

. AIKEN, from the Committee on Patents, submitted the following

REPORT:

e Committee on Patents, to whom was referred the petition praying for the issue of a patent to John P. Reynolds, beg leave to submit the following report:

The said John P. Reynolds applied for and received, on the 14th July, 38, letters patent for "a design for an Army and Navy emblem," said ters to continue in full force for the period of seven years. At the piration of this time he applied for a new patent upon the same in- tion, upon the ground that the first patent was an error and should e been a "mechanical" and not a "design" patent.

Mechanical patents are granted for improvements in the mechanical s, processes, or articles of manufacture (sec. 4886, R. S.). Design ents refer to matters of ornament chiefly—as to certain patterns, ats, pictures, &c. (secs. 4929 and 4933, R. S.). Your committee, after investigation of the subject, are of the opinion that the invention or ice of Mr. Reynolds was properly patented as a "design patent," is not entitled to recognition as a "mechanical patent," and there- e report adversely.

I CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
d Session. } { No. 1640

MARY ANN MURPHY.

: 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

FIELD, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6386.]

Committee on Invalid Pensions, to whom was referred the petition of ary Ann Murphy, having had the same under consideration, beg leave submit the following report:

'e find, from an examination of the papers on file in the Pension e, that the petitioner is the widow of John Murphy, who was a lsman in the United States Navy; that he enlisted November 20, ; was transferred to the United States steamer Rhode Island, and he died at the United States Naval Asylum, at Philadelphia, Octo- 23, 1863, having been received at that institution from his vessel tember 30, 1863; "cause of death, ascites."

he widow's application for pension was filed November 14, 1863; was cted October 14, 1871, the ground of rejection being "disease did originate in line of duty."

his decision is based upon the surgeon's record in the case, which is ollows:

UNITED STATES STEAMER RHODE ISLAND, *September* 13, 1863.

hn Murphy admitted; a few days previous had had liberty; drank freely; slept in pen air; disease, ascites. There is no evidence that the disease originated in the of duty. *Hospital ticket.*

S. G. WEBBER,
Assistant Surgeon.

n an affidavit presented in the case from Dr. Webber, sworn to Octo- 8, 1868, he states:

hn Murphy, landsman, was on board the Rhode Island at the time he was surgeon at vessel; he had an attack of ascites, for which he was sent to the hospital. nt was told by Murphy (or his mates—he forgets which) that he became intox- d and slept in the open air; three or four days thereafter his sickness commenced. possible that the hot climate and his labor in the fire-room predisposed him to ttack, and rendered it more surely fatal.

pposed to this evidence, which is altogether the basis of the rejec- , William Sutherland, ordinary seaman, John Fitzgerald, fireman, r J. Howard, landsman, and Lemuel Pope, all of whom served on Rhode Island with deceased, swear that the deceased was detailed erve as coal-heaver on that vessel. All of them testify that the had liberty to go on shore at St. Thomas, West Indies; that some he men became intoxicated, but that Murphy did not.

Fitzgerald, who was associated with the deceased in the fire-room, swears:

I know he was complaining of sickness for some time before we went ashore at St. Thomas; this, from the effect of heat and overwork, and finally from this sickness he had to give up and go on deck. The general impression among the employés of the engineer's department was that he was "used up" in the fire-room.

The affidavit of Lemuel Pope states that quite a number of the firemen and coal-heavers were used up from the heat and overwork in the fire-room, and that Murphy was one of them. Of his disability he was brought on deck to do duty as landsman; that he was not one of the men that became drunk at St. Thomas; that he did not stay on shore at night, and in his opinion his disease originated from excessive labor in the fire-room.

In view of the direct evidence of his comrades, as opposed to the hearsay knowledge and theory of the surgeon, your committee believe that the death of the landsman referred to may justly be attributed to disease in line of duty, and that the petitioner, who is bereft of the services of her husband, should be admitted to the pension-rolls. We therefore report favorably upon her prayer, and recommend the passage of the accompanying bill "granting a pension to Mary Ann Murphy."

O

ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
lession. } { No. 1641

RICHARD DEVETT.

880.—Committed to the Committee of the Whole House and ordered to be printed.

'FROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1146.]

nmittee on Invalid Pensions, to whom was referred the bill (H. R. granting a pension to Richard Devett, have considered the same, and t:

aid Devett was a private in Company C, Ninth United States y, from 10th April, 1860, till discharged, 10th April 1865—five He alleges that while in said service and in line of duty at Fort , Wash. T., on or about 20th September, 1862, he was shot in the nd in consequence of said wound he was on the sick-list at Fort ver, and from there he was transferred to the San Juan Isl- pital in the spring of 1863, where he remained five months.
s Short testifies that he was a comrade of claimant in said serv- . he states further that the claimant while in line of duty and fault or improper conduct of his own, on or about 3d day of ber, 1862, at Fort Colville, in Washington Territory, while acting d and aiding in making an arrest, received a gunshot wound in taking effect five or six inches above the ankle, and on that ac- as in hospital for about six months. Thomas Butler makes the tatement. L. W. Deneson, examining surgeon, testifies that t is three-fourths disabled by reason of an injury resulting from l in left leg, and continues that there is enlargement of the knee d pain, and that the claimant is lame, and unable to perform any extent. Claimant asserts that the surgeon who treated him There is no record of the alleged injury in the War Department. im was rejected because of the inability of claimant to adduce l proof of disability.
ew of the fact that claimant served in the Army five years, that blishes his claim by two disinterested witnesses and the report examining surgeon, we recommend that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1642.

FRANCIS LITTLE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4467.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4467) granting an increase of pension to Francis Little, have considered the same, and report:

It appears that the claimant herein was a private in Company B, Fifty-third Pennsylvania Volunteers, and lost a leg below the knee at the battle of Cold Harbor, Va., June 4, 1864. He applied for pension, and in 1866 was granted pension at the rate of $8 per month, which was afterward increased to $18 per month, at which rate he is now receiving pension, which he asks Congress to increase to the sum of $30 per month.

There is now on the House Calendar a bill reported by the Committee on Invalid Pensions, pensioning soldiers whose disability is identical with claimant's, at the rate of $25 per month; and in view of the fact that it is the unanimous opinion of the committee that said bill ought to pass, we report this bill back with an amendment, striking out $30 wherever it occurs in the bill and inserting $25, with a recommendation that the amendment should be adopted; and with the adoption of said amendment we recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1643.

MRS. JANE W. McKEE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6387.]

The Committee on Invalid Pensions, to whom was referred the joint resolution of the Kentucky legislature relative to increasing the pension now paid Jane W. McKee, have considered the same, and report:

The said Jane W. McKee is the widow of Col. William R. McKee, who commanded the Second Regiment of Kentucky Volunteers at the battle of Buena Vista, who fell at the head of his command while leading it in the most gallant manner at the beginning of that engagement. Mrs. McKee is the mother of Lieut. Hugh McKee, late of the United States Navy, who was killed in action at Corea, in Asia, while fighting his way into the fortifications of the enemy.

In view of the distinguished services of this woman's husband and son, and the fact that both of them lost their lives in battle in defense of their flag, one in the eastern and the other in the western hemisphere, the gallant manner in which they shed their blood and sacrificed their lives, and the further facts that there are numerous precedents for such action, the committee recommend that Mrs. McKee's pension be increased to $50 per month, and recommend the passage of the bill reported herewith.

O

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1644.

GILBERT A. PHILIPS.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

. CALDWELL, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6288.]

Committee on Invalid Pensions, to whom was referred the bill (H. R. 578) granting a pension to Gilbert A. Philips, have considered the same, nd report.

appears that the said Philips was a soldier in the Mexican war. rther appears that by order of General William Nelson he was, in , appointed a lieutenant in Colonel Marshall's regiment of Kentucky nteers, and afterward was, by order of General Nelson, appointed rtermaster of a brigade in General Nelson's command, and served he United States Army during the late war, under the said appoint- its, about one year. Until 1872 he was able to labor for a support, since that time he has been completely prostrated and is entirely ble to perform manual labor—his large and interesting family being endent upon the exertions of a daughter, who teaches music, and a ng son, who is a day laborer.

ol. John H. Wood, one of the most prominent of the ex-Union officers Kentucky, strongly recommends that a pension be granted Captain lips, and states that his is an exceptionally meritorious case.

r. Frazer states that Philips is partially paralyzed, and has been e he first knew him, six years ago.

r. D. Cummins, one of the most eminent surgeons and physicians of tucky, in connection with this case, says:

hom it may concern:

is is to certify that I have known Gilbert Philips since 1850. He has been since , and is now, a helpless invalid, the result of his exposure during the Mexican supplemented by his campaign during the late war.

he committee are of opinion that the above statement of facts rants them in recommending that this applicant be pensioned, and y report the bill back with a substitute, with a recommendation that l substitute do pass.

O

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. }) No. 1645.

MARGARET S. HEINTZELMAN.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6389.]

Committee on Invalid Pensions, to whom was referred the petition of argaret S. Heintzelman, praying for a pension, having had the same der consideration, would respectfully report:

at Margaret S. Heintzelman is the widow of the late Samuel P. ntzelman, of the United States Army.

eneral Heintzelman entered the military service on July 1, 1822; he ed with distinction in the Florida war, in the war with Mexico, and xpeditions against the Indians in California and Oregon. In May, , he was appointed colonel in the United States Army and brigadier- eral of the United States Volunteers, and in May, 1862, major-general olunteers, and was engaged during the greater part of the late civil in active field operations—at the battle of Bull Run, July, 1861, where vas wounded, and the Virginia Peninsula campaign, in command of Third Army Corps; at the seige of Yorktown; at the battle of Will- sburgh; at the battle of Fair Oaks; at the battle of Gaines's Mill, at the battles of Savage Station, Glendale (where he was contused), of Malvern Hill, in the Northern Virginia campaign in the fall of ; at the battle of Manasses, August, 1862; at the battle of Chan- . He afterwards commanded the defenses at Washingon and the partment of Washington, and the Twenty-second Army Corps; he brevetted brigadier-general of the United States Army for gallant meritorious conduct at the battle of Fair Oaks, and major-general he United States Army for gallant and meritorious service at the le of Williamsburgh. After the close of the war he was in command exas and elsewhere until he was retired by a special act of Congress, ate from February 22, 1869, as major-general, for wounds received ine of duty. On the 1st day of May, 1880, he died of disease con- ted while in active military service, and the result of extreme expos- in the line of duty, and of the wounds received as detailed above, ing a wife and one daughter without adequate provision to supply r necessities.

our committee are therefore of the opinion, in view of the long, able, and eminent services of General Heintzelman, and the fact he died from wounds received and disease contracted while fight- the battles of his country, that his wife and daughter should have pension prayed for in the accompanying petition. They therefore ort favorably, and recommend that the bill which is herewith reported h the petition do pass.

O

I CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1646.

WIDOW AND CHILDREN OF GEORGE N. BARBER.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1605.]

Committee on Invalid Pensions, to whom was referred the bill (H. R. 605) granting a pension to the widow and children of George N. Barber, aving had the same under consideration, would respectfully report:

'hat George N. Barber was a private in Company G, Fourteenth Regi-nt of New York Volunteers; he was wounded in the service and in line of duty, and was pensioned by the government for his disabili-. When the yellow-fever epidemic broke out at Memphis, in 1878, volunteered his services as nurse, and was assigned to duty under auspices of the Hebrew, Citizens' Relief Committee at Memphis, and dered valuable and noble services during all the time he was there il October of that year, when he was attacked by the fever and died nartyr to the cause of humanity. The official report of the yellow-er commission virifies his death while in the line of duty as such se. His widow applied for a pension, and was rejected on the ground t the husband did not die from the effects of the wound for which he was sioned. While this is a legal objection to the admission of the claim the Pension Department, your committee are of the opinion that this a case that appeals to the charity and sympathy of Congress, and uld have the relief provided for in the accompanying bill. When a n leaves wife, children, and friends, and gives up his life in alleviating suffering of others, as this man did, your committee are of the opinion t his wife and children should have the same benefit from his pen-n as if he had died from the effect of his wound for which he was pen-ned. They therefore report back the accompanying bill, and recom-nd its passage.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1647.

SAMUEL D. STILES.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6390.]

The Committee on Invalid Pensions, to whom was referred the petition of Samuel D. Stiles, praying for a pension, having had the same under consideration, respectfully report:

That Samuel D. Stiles was employed during the civil war as a teamster in the service of the United States, and while so employed and on duty under the orders of Capt. John R. Craig, an assistant quartermaster, on or about the 3d day of April, 1865, at Cumberland, Md., he was kicked by a balky horse of his team, breaking his right leg between the knee and ankle. He was treated for his disability in the military hospital at Clairsville, but never recovered the use of his leg, and he is now so much disabled in consequence of said injury as to disqualify him from manual labor for his support.

In view of these facts, which are fully sustained by the evidence before your committee, we are of the opinion that he should be granted a pension, and therefore report back the petition, and recommend that the bill which accompanies it be passed.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1648.

JOHN Q. WHITE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6391.]

The Committee on Invalid Pensions, to whom was referred the petition of John Q. White, praying for a pension, having had the same under consideration, respectfully report:

That from an examination of the papers in the case the committee are satisfied that the following statement made by the petitioner is substantially true:

That on the 6th day of September, A. D. 1861, the petitioner was duly enrolled at Marysville, in the State of California, as a private in Company D, of the First Regiment of California Volunteer Cavalry, to serve three years; that said regiment was sent into the southern part of Upper California, for some time at Los Angelos, and then in San Bernardino County; that they relieved and took the place of the regular troops who had been stationed there; that petitioner was regularly detailed as one of the cooks for said company, and whilst engaged in that duty, in the month of February, A. D. 1862, one of the men of said company, who was known as of an arrogant and quarrelsome disposition, came into the cook tent and was interfering and hindering petitioner in the performance of his duties. Petitioner ordered him to go out of the cook tent. He then attempted to whip petitioner, and in the scuffle which ensued he got the thumb of petitioner's left hand in his mouth and bit it severely. Petitioner was treated for the injury by a physician of San Bernardino, who was supplying the place of the surgeon of the regiment; but gangrene supervened, and it became necessary to amputate the arm of petitioner above the wrist, which was done.

As the disability occurred while in the line of duty, your committee are of the opinion that the petitioner should be granted a pension. They therefore report back the petition and recommend the passage of the accompanying bill.

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3TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1649.

. J. HATHAWAY, GUARDIAN OF SUSAN, WALTER, AND FRANK PHEMESTER.

UNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Ir. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6392.]

The Committee on Invalid Pensions, to whom was referred the petition of S. J. Hathaway, guardian of Susan Phemester, widow of John Phemester, late a private in Company I, Ninth Regiment Kansas Volunteer Cavalry, also guardian of their children, Walter and Frank Phemester, praying for a pension for them, having had the same under consideration, respectfully report:

That John Phemester enlisted September 10, 1861, in the above-named ompany and regiment, and served until March 29, 1865, when he was ischarged at Fort Leavenworth, Kans., by reason of expiration of erm of service. After his discharge, but while still with the rmy, which was engaged in punishing and driving off hostile Indians, he was killed by the Indians on June 12, 1865. Soon after his eath his wife began to show signs of insanity, and finally became inane, and is now an inmate of the Hospital for the Insane at Athens, hio, as is shown by official certificates from the proper officers. S. . Hathaway was appointed her guardian, and became also the guardian f the children. By reason of the said John Phemester having been illed after his discharge from the service the claim for pension could ot be admitted by the department, and can only be allowed by special ct of Congress.

In view of the fact that the mother is insane and the children wholly dependent upon charity, your committee feel justified in reporting favorbly and in recommending the passage of the bill which is reported ack with this petition.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1650.

SYLVADOR JACKSON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. EWING, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6393.]

The Committee on Invalid Pensions, to whom was referred the petition of Sylvador Jackson, having had the same under consideration, respectfully report:

That Sylvador Jackson was a deputy provost marshal in the thirteenth Ohio district; and while in the discharge of his duty, attempting to arrest a deserter from the United States Army, he was set upon and assaulted with stones and slung-shots by the friends of said deserter, in which assault his skull was fractured above the left ear and the frontal bone over the left eye was also fractured. The injury resulted in inflammation of the eyes, from which he has almost wholly lost his sight. The evidence shows that the disability has been continuous from the day of injury until the present time and is gradually growing worse.

In view of the fact that the injury was received while in the discharge of his duty as a United States officer, your committee report favorably, and recommend the passage of the bill which accompanies this petition.

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1651

PETER J. WELSCHBILLIG.

VE 4, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6394.]

: Committee on Invalid Pensions, to whom was referred the petition of Peter J. Welschbillig, praying for a pension, having had the same under onsideration, would respectfully report:

That Peter J. Welschbillig was a captain in Company G, of the Thir- second Indiana Regiment Volunteer Infantry. He enlisted August 1861, and was discharged September 12, 1862, for disability received the battle of Shiloh, Tenn. A shell struck the limb of a tree, knock- the limb off, which struck him in the right side, injuring him inter- ly, and causing a fracture of the ninth and tenth ribs, resulting in ammation of lungs and adhesion. He applied for a pension March 31, 6, and was rejected November 30, 1877, on the report of a special nt that the alleged disability was not due to the service, but existed late of enlistment. The evidence produced and secured by the special nt does not contain any positive proof that the injury was not con- cted as alleged by the claimant. On the contrary, all the evidence lected by the special agent is of a "hearsay" character, while that duced by the petitioner is of a positive and straightforward charac- Dr. J. Isler testifies that petitioner was a sound, able-bodied man, afflicted with liver disease, lung adhesion, or injury to right side, or disease whatever at enlistment. Col. August Willich, colonel of the iment, testifies that petitioner was injured in the right side by being uck with the limb of a tree which was cut off and thrown by a shell Shiloh, Tenn., April 7, 1862. Jacob Pfister, who was a private in itioner's company, testifies that he was present at the battle of iloh with the petitioner, and was engaged in the battle with him, and the limb which was cut off by a shell fall upon him and knock him the ground, and that said Captain Welschbillig was assisted from the d of battle by three comrades, who sprang forward to his aid, and t said Welschbillig at the time of said accident was in the line of his ty; that in stating these facts he speaks from his own personal knowl- ge. Charles Franz Weber, who was first lieutenant of the company, tifies to the same thing, and from his own personal knowledge. That e disability still exists, and has been continuous is fully proven by the stimony of Dr. F. D. Leary, who testifies that claimant is now and has ice his discharge been afflicted with adhesion of right lung caused by injury. He also testifies he was called in October, 1862, in consulta-

tion with Dr. Punghurst, and Captain Welschbillig was then afflicted with said disease and injury, and knows of his own personal knowledge that the disability has been continuous. Dr. William F. Cady testifies to substantially the same thing. The board of examiners at Lafayette, Ind., rate his disability as total, and say that it is the result of a limb of a tree striking him, and say that the right side is one inch less in expansion than the left; cannot draw a full breath without pain, and not able to raise his right arm above an angle with the body; suffers almost constant pain in side; dullness over right lung; crepitation well marked; constant cough; appetite impaired; not able to perform manual labor on account of the disability.

In view of all these facts, which seem well sustained, your committee are of the opinion that Capt. Peter J. Welschbillig should be granted a pension, and report the accompanying bill, and recommend its passage.

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1652.

JOEL R. CARTER.

NE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HOSTETLER, from the Committee Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6395.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 752) granting a pension to Joel R. Carter, having had the same under consideration, would respectfully report:

The adjutant-general of Indiana certifies that this man's name is not found upon the records of Company D, Eighty-second Regiment Indiana Volunteers, either as a member at original organization or as a recruit for said company.

The assistant adjutant-general of the United States certifies that the name of Joel R. Carter does not appear on the rolls of Capt. Wm. W. Browning's Company D, or on recruit-rolls of Eighty-second Indiana Volunteers on file in his office, and that no enlistment paper of him is on file.

But, notwithstanding this defect in the records, the evidence shows conclusively that this man was enlisted in said company about the 21st of August, 1862, and went with said company to Madison, where there was a camp, and where the Eighty-second Regiment took the place of another regiment (which had been ordered to the front), and were on duty as guards about two weeks before they were examined; and while on such duty, exposed to wet weather day and night, and not having drawn any blankets or tents, this man contracted a severe cold, producing rheumatism, by reason whereof the mustering officer refused to muster him in; and he has not been able since to walk without crutches, although up to the time of his enlistment he had been a stout and hearty man and free from disease. These facts are shown—

1st. By the affidavit of the claimant.

2d. By the affidavit of his captain, who swears to the enlistment and to the service in camp at Madison, and that the disability is total and was caused by exposure in the camp.

3d. By the affidavit of his family physician, who swears that before enlistment the man was of sound health in all respects, but came home with acute rheumatism, which resisted treatment and became chronic, and has totally disabled him.

4th. By the affidavits of William Brummel, Thompson Maguire, George W. Marshall, and James Hampton, members of the same regiment, who swear that they *were with this man* in Camp Emerson at Madison, and

that while he was there on duty he was attacked with rheumatism, so that he could not be mustered.

5th. By the certificate of the examining surgeon of the Pension Office, who states that the disability is total and probably permanent, and that from the evidence before him he believes that the disability originated in the service aforesaid and in the line of duty.

It may be observed that the evidence stated above in No. 4 was not considered in the brief of the Pension Office on which the claim was rejected.

The only question is whether all this accumulated evidence is sufficient to overcome the presumption arising from the defective records, and to show that in fact Joel R. Carter was an enlisted man in Company D, of the Eighty-second Indiana Regiment, in service as such at Madison, and there in the line of his duty incurred the disability for which he seeks a pension.

In the opinion of your committee these facts seem sufficiently well established, and they therefore report back the accompanying bill with a recommendation that it do pass.

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6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1653.

WILLIAM C. FINE.

NE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

:. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2242.]

he Committee on Invalid Pensions, to whom was referred the bill (H. R. 2242) granting a pension to William C. Fine, having had the same under consideration, would respectfully report:

That William C. Fine was a private in Company B, One hundred and rty-fifth Regiment Indiana Volunteer Infantry. He enlisted January 5, 1865, and was discharged January 21, 1866. While in the service nd in the line of duty he contracted pneumonia, which settled in his yes, and his eyes continued to grow weaker until his discharge, and own to the present time, and, according to report of the examining surgeon, Dr. John M. Harrah, his disability is rated at one-half.

He applied for a pension July 28, 1870, and was rejected March 5, 878, on the ground that he was "barred by section 4717 of the Revised tatutes." No question was raised by the department that he was not ntitled to a pension, but simply because the case was not prosecuted gorously to an issue within five years of the date the original declaraon was filed his case was rejected.

The evidence shows conclusively that the disability was contracted the service and in the line of duty. This is verified by the testimony Capt. Michael Gelwick, who was captain of the company in which aimant served. The records of the Adjutant-General and Surgeon-eneral show his sickness at the time and place indicated by the claimnt in his declaration, and Drs. Newland and Dowden testify to the resent existence of the disability. Three of his neighbors testify to the ame thing and to its being continuous from his discharge down to the resent. No question is raised as to his being a sound man at enlistent, and the evidence proves that this was a fact.

In view of these facts, which are well sustained, your committee are atisfied that a pension should be granted. They therefore report back he accompanying bill and recommend that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1654.

SIDNEY B. HAMILTON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3880.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3880) granting a pension to Sidney B. Hamilton, having had the same under consideration, would respectfully report:

That from a careful examination of the evidence submitted, your committee are of the opinion that the facts presented do not constitute sufficient grounds upon which to base a claim for special relief. They therefore report adversely, and ask to be relieved from the further consideration of the same.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1655.

CALVIN D. HUFF.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 747.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 747) granting a pension to Calvin D. Huff, having had the same under consideration, would respectfully report:

That the evidence in the case is not sufficient to justify any special relief. Your committee therefore report back the accompanying bill adversely, and ask to be discharged from the further consideration thereof.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 1656.

THOMAS FERGUSON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3398.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3398) granting a pension to Thomas Ferguson, having had the same under consideration, would respectfully report:

That from a careful examination of the evidence submitted, your committee are of the opinion that facts sufficient are not presented to constitute a claim for special relief. They therefore report adversely and recommend the dismissal of the bill, and ask to be relieved from the further consideration of the same.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1657.

TO AMEND ARTICLE 3 OF SECTION 4693 OF THE REVISED STATUTES.

JUNE 4, 1830.—Referred to the House Calendar and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5936.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5936) to amend article 3 of section 4693 of the Revised Statutes, have had the same under consideration, and respectfully report:

That on the 18th day of August, 1862, there occurred in the State of Minnesota an Indian outbreak, known as the Sioux Indian massacre, by which hundreds of the settlers on the frontier were killed and many others wounded and permanently injured by the Sioux Indians engaged in the war upon the people. The residents in the neighborhood of Fort Ridgeley and the village of New Ulm fled to those places for protection and safety. The Indians had already swept the valley of the Minnesota to those points, where an organized resistance was made, and a fight kept up for eight days with such re-enforcements as could be hastily gathered together from other parts of the State. The determined resistance of those who were defending New Ulm saved the State from being overrun by the most brutal savages that ever raised a hand against a quiet, orderly people. It is impossible to estimate the number of lives and the millions of dollars worth of property saved by the heroism displayed at New Ulm. So sudden was the call to arms that no regular method of enrollment could be made; the emergency was great; the savages must be stopped at these points or a great part of the State would have been doomed to destruction. No men ever deserved more who defended their country than those who fought at the battle of New Ulm. The stand made at Fort Ridgeley and New Ulm stopped the march of the savages, and saved the women and children of the State from a fate worse than death. In the fight a number of persons who were called out by the sheriff of Brown County were either killed or wounded. To provide for them and their families Congress passed an act, approved July 4, 1864. (See article 3, section 4692, Revised Statutes.) Shortly after this act was passed a number of pensions were allowed by the Commissioner of Pensions to those who were called out by the sheriff. Afterwards the Commissioner of Pensions, in the year 1871, decided that persons who were called out by the sheriff were not entitled to pensions under this law, as they could not be considered volunteers.

Your committee are of the *opinion* that the men who responded to

the call of the sheriff to defend the town against the Indians were as useful as if called out by the President of the United States.

It is true the men who were engaged in the fight at New Ulm were not under United States officers, as none were near to take command. It was one of those cases where the most active man takes command by common consent. The result of the fight was the safety of the State. We therefore recommend that the bill do pass.

O

NGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
ssion. } { No. 1658.

MARY TARBELL.

80.—Committed to the Committee of the Whole House and ordered to be printed.

ON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5452.]

mittee on Invalid Pensions, to whom was referred the bill (H. R. granting a pension to Mary Tarbell, having had the same under con- ion, beg leave to submit the following report:

etitioner is the widow of William H. Tarbell, late first sergeant sioned lieutenant) Company D, Seventy-sixth Regiment New lunteers. While engaged in the battle of Gettysburg, July 1, received a gunshot wound by a rifle ball in the upper part of high, fracturing the bone very badly, from which he only par- covered, leaving the bone weak, with four inches shortening, him very much disabled. He was admitted to the pension-rolls er month for said disability, and was a pensioner thereon at the his death, January 5, 1874.

time of his death he was in the forest cutting wood for his use, and while so engaged was caught under a falling tree and

Hendrick, M. D., late surgeon of the One hundred and fifty-sev- w York Volunteers, in an affidavit dated March 10, 1880, testifies ving a description of the wound):

very lame; that said Tarbell could not step backward—often spoken of by hat to move in a rear direction he must first turn himself around and move ward step; that he could leap or jump only with one foot, alighting on that these disabilities existed at the time of his death; that the extent of of the bone was such and the consequent disability that said Tarbell had having the leg amputated, and had several times consulted deponent in re- eto; further, that in the situation in which said Tarbell was placed at the accident, as described by the witness Waldo V. Shearer, who was with him ely similarly situated, and who, with the full use of his limbs and with the ort, barely escaped uninjured, it is the opinion of deponent that said ith the above-described disabilities, could not have possibly extricated him- hat, in this view, his death was the result of his wounds received in the le in the service of his country.

V. Shearer, who was working with the said William H. Tar- ng trees, gives a detailed account of the accident, and says:

it, having the full use of his bodily powers, did, only with great effort, sue- tricating himself from this perilous situation and escaped unharmed, while ll did not and could not do so on account of his extreme lameness, said aking all due effort to escape by the same means and in the same direction as

Deponent further says that he was personally cognizant of the extent of said Tarbell's lameness; that they were brothers-in-law, often together, and had been together for a month previous working in the same woods getting firewood; that the wounded limb was much shorter than the other, and he was very lame from his wound.

There is a petition filed in the case from a large number of reputable and prominent citizens of Cortland County, New York, asking Congress to grant the widow of William H. Tarbell a pension, to date from the time of her husband's death, January 5, 1874, believing as they do that but for this wound and consequent lameness he would have escaped injury.

Your committee are of the opinion that while a strict construction of the law might debar the petitioner's claim in the Pension Office, she is equitably entitled to a place on the pension-rolls. Her husband's death was undoubtedly caused by an accident from which he might have escaped unharmed but for the disability he received in the service, and for which he was a pensioner at the time of his death. Your committee therefore report favorably upon the prayer of the petitioner, and recommend the passage of the accompanying bill (H. R. 5452) granting a pension to Mary Tarbell.

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1659.

JOSEPH H. CROW.

JNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 840.]

he Committee on Invalid Pensions, to whom was referred the bill (H. R. 840) granting a pension to Joseph H. Crow, having had the same under consideration, beg leave to submit the following report;

It appears, from an examination of the papers on file in the Pension ice in the case, that petitioner was captain of Company F, One ndred and fifty-second Illinois Volunteers; enlisted February 18, 1865, d discharged May 17, 1865, upon the following certificate:

HEADQUARTERS ONE HUNDRED AND FIFTY-SECOND ILLINOIS VOLUNTEERS,
Tullahoma, Tenn., May 8, 1865.

oseph H. Crow, captain Company F, One hundred and fifty-second Regiment of inois Volunteer Infantry, having applied for a certificate on which to ground his signation, I do hereby certify that I have carefully examined this officer, and find at he is suffering from chronic rheumatism and chronic diarrhea, and that in conquence thereof he is, in my opinion, totally unfit for duty. I further declare my lief that he never will be able to resume his duties.

H. S. PLUMMER,
Surgeon One hundred and fifty-second Regiment Illinois Infantry Volunteers.

The petitioner filed declaration for pension November 23, 1870, lleging—

That while in line of duty, from extreme exposure, at Tullahoma, Tenn., on or about larch 10, 1865, he contracted chronic rheumatism; was not treated in hospital, but y Dr. Plummer, regimental surgeon.

There was a large amount of medical and lay evidence filed in the ase, and the Pension Office ordered an examination by a special agent wice, viz, June 26, 1878, and November 29, 1878, and upon the strength f the reports rejected the claim January 3, 1879, on the ground Rejection on report of special agent; disability existed for years prior o enlistment."

The evidence, being very full, has enabled your committee to gather ll the material facts in the case. Robert H. Freese, M. D., testifies hat—

He examined claimant, who was about entering into the service in 1865, and that he as in perfect health, physically and mentally; affiant was at that time family physician of claimant.

James H. Bryant, M. D., says he attended—

The family for three years prior to the claimant's enlistment in 1861, and that during that time he was a sound, healthy man, free from all symptoms of rheumatism.

Atterson Douglass and Joseph H. Douglass testify that they have known—

Claimant twenty years; lived neighbors to him when he enlisted; saw him every day, and that he was entirely free from rheumatism or any other disease.

Philip S. Barnett corroborates previous witnesses as to soundness previous to his enlistment.

Hiram S. Plummer, M. D., at present examining surgeon Pension Office at Mount Vernon, Ill., and formerly surgeon of the claimant's regiment, testifies—

That he knew claimant well, and knows that he was attacked with rheumatism as alleged by him, and that the disease continued until he left the service.

Francis Byers and Alex. H. McClure testify from personal knowledge that—

Claimant contracted the rheumatism about March 10, 1865, and that it has continued and incapacitates him from earning a livelihood by manual labor.

The petitioner states under oath that—

After leaving the service he treated himself according to the directions given him by the regimental surgeon until June, 1868, when he put himself under the care of Wm. Clattis, M. D., of Noble, Ill., who treated him until October, 1869, when the doctor moved to Kansas, and affiant is unable to learn his address; that he soon after placed himself under the treatment of J. W. Bowman, M. D., of Flora, Ill., who attended him until February, 1870; that affiant shortly after moved to Edwards County, Illinois, and treated himself until the summer of 1873, following the advice of Dr. Bowman, since which time he has been treated by Dr. Strahan.

James Strahan, M. D., testifies that he has been treating claimant for chronic rheumatism since September 1, 1873.

Your committee are of the opinion that this is a meritorious case. The soundness of the petitioner before his enlistment seems to be fully established, and the fact that he was first attacked by rheumatism while in the service is attested by unimpeached medical evidence. Its present effect upon the petitioner is shown by John J. Lescher, M. D., examining surgeon of the Pension Office at Mount Carmel, Ill., "who rates him on account of it at one-half disability, and who says there can be no doubt as to the fact that he labors under the pains of chronic rheumatism."

Your committee, therefore, report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 840) granting a pension to Joseph H. Crow.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1660.

SOPHIA A. MORGAN.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2492.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2492) granting an increase of pension to Sophia A. Morgan, widow of Bvt. Brig. Gen. Charles H. Morgan, late of the United States Army, having had the same under consideration, respectfully submit the following report:

The petitioner, Sophia A. Morgan, is the widow of Bvt. Brig. Gen. Charles H. Morgan, late of the United States Army, who died at Alcatraz Island, California, December 20, 1875, after a somewhat protracted illness. He died of apoplexy, resulting from a diseased state of his arteries. His disease was contracted in the line of duty. The deceased left surviving six children, four of whom are under sixteen years of age, and one of whom—the youngest—died in 1879. These children reside with their mother, and are dependent entirely upon her for support. Upon the death of her husband Mrs. Morgan removed to Syracuse, State of New York, then the residence of her husband's father, the late Hon. Leroy Morgan, for many years one of the justices of the supreme court of that State. The pecuniary circumstances of Judge Morgan did not enable him to assist the petitioner and her children. Mrs. Morgan owns a small house and lot in the city of Syracuse, which is encumbered by mortage. She is receiving a pension at the rate of $396 a year. Her income is about $700 per annum, which she states in her verified petition is insufficient to support herself and children, all of whom reside with her and are now being supported by her. She is now, and has been since the death of her husband, in ill health.

The military services of General Morgan, and his work and promotions in the service, are set forth in the order of Major-General Schofield announcing his death, and which is made a part of this report and is as follows:

[General Orders No. 8.]

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, Cal., December 21, 1875.

It is the painful duty of the major.general commanding to announce the death of Bvt. Brig. Gen. Charles H. Morgan, major Fourth Artillery, who died at his post, Alcatraz Island, California, December 20, 1875, at 11.30 p. m., after a short illness.

Major Morgan was graduated at the United States Military Academy, West Point, July 1, 1857, and entered the Army as brevet second lieutenant of artillery. He was promoted second lieutenant Fourth Artillery September 10, 1857, and served on the

frontier, in the Utah Expedition, until the breaking out of the rebellion in 1861, when he was transferred to Western Virginia, and bore a conspicuous part in the operations of his regiment. He was promoted first lieutenant April 1, 1861, and captain August 5, 1862.

January 1, 1863, he was appointed assistant inspector-general and chief of staff of the Second Army Corps, with the rank of lieutenant-colonel of volunteers, and participated in many of the most important and memorable engagements of the Army of the Potomac, and was appointed brigadier-general of volunteers May 21, 1865.

He received special mention for his gallantry on many occasions, and was brevetted as follows: Brevet major, for gallant and meritorious services at the battle of Gettysburg, July 3, 1863; brevet lieutenant-colonel, for gallant and meritorious services in the action at Bristoe Station, Virginia; brevet colonel United States Army, May 12, for gallant and meritorious services at the battle of Spottsylvania Court-House, Virginia; brevet colonel volunteers, August 1, 1864, for distinguished and valuable services, and gallantry throughout the campaign, especially at the Wilderness and Spottsylvania; brevet brigadier-general United States volunteers, May 25, 1865, for gallant and distinguished services as chief of staff of the Second Army Corps during the campaign before Richmond, Va.; and brevet brigadier-general United States Army, March 13, 1865, for gallant and meritorious services in the field during the rebellion.

After the close of the war, February 5, 1867, Major Morgan was selected for promotion, and appointed major in his old regiment—the Fourth Artillery—with which he has served almost continuously since that date. May such faithful and brilliant services, and their prompt recognition and reward, ever be remembered for the emulation of the young officers of the Army. Major Morgan died in the early maturity of his manhood, but he has left a bright record to which his commander refers with pride, and here records his high appreciation of the zeal, intelligence, and energy which characterized Major Morgan's performance of every duty assigned him during his service in this division.

As an evidence of respect the officers of this military division will wear the usual badge of mourning for thirty days.

By order of Major-General Schofield.

J. C. KELTON,
Assistant Adjutant-General.

Official:

WM. M. WHERRY, *Aid-de-camp.*

The bill in question provides for placing Mrs. Morgan on the pension-roll at the rate of $50 per month.

In view of the long and distinguished services of General Morgan, of the ill health of his widow, the petitioner, and of the young children entirely dependent upon her for support and education, we think the prayer of the petitioner should be granted, and recommend the passage of the bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1661.

RICHARD DILLON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2375.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2375) granting a pension to Richard Dillon, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office that claimant was a private in Company B, One hundred and first Regiment New York Volunteers; enlisted November 26, 1861; discharged May 18, 1863; and filed declaration for pension September 19, 1876, "alleging chronic bronchitis, near Hancock, Delaware County, New York, January 15, 1862."

The Pension Office rejected the claim on the ground, "claimant unable to furnish medical proof showing any present disability is due to the service." There is also attached to the Pension Office "brief," showing rejection of the case, a letter headed "Read"—"Read"— "Post Office, Utica, N. Y., March 9, 1878," and signed "C. H. Hopkins, P. M.," which asserts—

> That Mr. Richard Dillon had contracted the complaint that you name before he went in the Army, and it was not especially aggravated by being there. There is a family relation between Mr. R. Dillon and Michael Conners; therefore, Mr. Conners would be pleased if Mr. Dillon could obtain a pension.
>
> Mr. Jameson, a letter-carrier, informs me that Mr. Thomas Rossiter is not considered a respectable citizen. He keeps game-cocks to match with others for a wager.
>
> To COMMISSIONER OF PENSIONS, *Washington.*

The two persons, Conners and Rossiter, referred to in the above letter are witnesses in the case now under consideration.

The claimant states that he cannot adduce medical evidence of soundness at enlistment, as his health was so good up to that time that he never needed a physician.

Michael Conners and Thomas Rossiter, May 1, 1877, testify that they—

> Have known claimant for past eighteen years, and up to enlistment he was a strong, healthy man, and able-bodied. That they know this fact to be true because they saw him frequently, worked with him, and from the amount of labor he was capable of performing they know that he was free from bronchitis or any disease at enlistment.

O. F. Plumb, lieutenant of claimant's company, testifies—

> That in the winter of 1862, at Hancock, N. Y., claimant took a severe cold on guard duty resulting in bronchitis.
>
> Filed May —, 1878.

David B. Van Slyck, M. D., assistant surgeon One hundred and first New York Volunteers, testifies—

That he examined claimant at his enlistment, and he was then in sound bodily health and vigor. Some time in January, 1862, while in barracks at Hancock, Dealware County, New York, he was ill from acute bronchitis, caused by exposure in line of duty, and affiant treated him during his illness until the regiment moved to Washington, D. C., in March, 1862, at which time claimant, having been ill about a month, was still too sick to accompany the regiment and was left behind and was afterwards discharged, as deponent was informed and believes, on account of the disability stated.

Filed May 1, 1877.

He also states in a letter that he made a personal examination of claimant when he entered the service, and knows that he was then absolutely free from bronchitis or any other disability. (Filed June, 1878.) Claimant states that since discharge he has been too poor to have medical treatment.

Michael Conners and Thomas Rossiter also testify—

That since claimant's discharge he has not been able to work more than one-fourth of the time on account of bronchitis and pain in his side.

The Adjutant-General reports—

On the muster-roll of Company B, dated March 21, 1862, he is reported deserted at Hancock, Delaware County, New York; March, 1862, was not present at the last muster; April, 1862, deserted March 7, 1862, at Hancock, Delaware County, New York; name does not appear on rolls of Thirty-Seventh New York Volunteers; no evidence of disability at date alleged, on company rolls; name does not appear on rolls of Company G, One Hundred and first New York Volunteers; certificate of disability reports him discharged May 18, 1863, at Albany, N. Y. The records of this office do not show that he was disabled by chronic bronchitis January 15, 1862; his name appears on list of casualties in post hospital, Albany, N. Y., from June, 1862, to August, 1863; date and cause of admission is not stated.

Surgeon-General's report shows that "claimant was discharged by reason of general debility and over age (54 years)."

The records of the regiment are not on file.

The examining surgeon of the Pension Office at Oneida, N. Y., August 23, 1877, who examined claimant, says, "In my opinion disease did originate in service, disability permanent," and rates him at one-fourth, $2 per month.

Your committee are of the opinion that the examining surgeon was correct in the judgment passed upon this soldier. The evidence shows that he was sound at enlistment, contracted bronchitis in the service, which was more or less severe after discharge, and, notwithstanding the aspersions cast upon the witnesses by the postmaster at Utica, we believe they have told the truth.

Your committee therefore report favorably upon the case, and recommend the passage of the bill (H. R. 2375) granting a pension to Richard Dillon.

○

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1662.

JOSEPH DEMPSEY.

UNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Ir. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5810.]

he Committee on Invalid Pensions, to whom was referred the bill (H. R. 5810) granting an increase of pension to Joseph Dempsey, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office hat the claimant was captain of Company K, One hundred and forty-eventh New York Volunteers; enlisted January 17, 1864; discharged une 7, 1865; and that he is now a pensioner on the rolls of the Pension ffice, at $5 per month, from June 7, 1865, for gunshot wound of right houlder. His application for increase of pension was rejected by the 'ension Office February 13, 1879. The rolls show that he was wounded 1 action February 6, 1865, gunshot wound, right shoulder.

The petitioner's medical examination, January 24, 1879, by the examing surgeon of Pension Office at Oswego, shows: "Disability one-alf of total. Increase recommended because of increased inability to se right shoulder. I find his disability entitling him to an increase of 5 per month, aggregating $10 per month."

Dr. A. S. Coe, who examined the claimant, seems to have made a horough diagnosis of the case, and gives his examination in detail. The ball remains in the wound.)

The claimant, in an affidavit, states "that the ball still remains in his houlder; that the growing and present disability arising therefrom otally incapacitating him from working at his trade, that of carpenter, nd to which trade he is dependent for his maintenance and support."

Your committee are of the opinion that the merits of this case depend ntirely upon the extent of the disability, and this is determined by the iedical evidence, which shows that the injury is greater than when riginally pensioned. We therefore report favorably upon the prayer f the petitioner, and recommend the passage of the bill (H. R. 5810) ranting an increase of pension to Joseph Dempsey.

○

5TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1663.

ELEANOR K. FILLIS.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 135.]

The Committee on Invalid Pensions, to whom were referred the petition of Eleanor K. Fillis and the bill (H. R. 135) granting her a pension, having had the same under consideration, beg leave to submit the following report:

It appears from the papers presented to your committee and those on file in the Pension Office in the case that the petitioner is the widow of George S. Fillis, who enlisted April 14, 1862, as private, Company B, Fifth Regiment New York Heavy Artillery; honorably discharged April 14, 1864, and then re-enlisted in same company; was granted thirty day's re enlistment furlough, and joined his company on or about June 20, 1864, and was detailed in the adjutant-general's office at Harper's Ferry, was taken sick, sent to hospital, and died there 23d June, 1864.

The widow's application for pension was rejected July 3, 1866, upon the "report of the Surgeon-General that the soldier died June 23, 1864, of delirium tremens."

Your committee find the certificate from Surgeon-General's Office, dated June 14, 1866, which says, "is reported to this office by Surgeon George S. Ditt sas having died at regimental hospital, June 23, 1864, with delirium tremens."

The Adjutant-General's report, June 2, 1866, says, "died at regimental hospital, Harper's Ferry, Va., June 22, 1864, of apoplexy."

The widow, in one of the statements filed, says that she received a letter from her husband on the 19th of June, "stating that he was ordered next day to join his regiment to march to Martinsburg." Also, that the thirty days her husband was at home on leave he drank nothing but beer, and only a small portion of the that. He was in perfect health when he left his family."

The widow also states in the same communication that she believes her husband died from bad treatment while in the hospital, and submits the affidavit of an inmate of the hospital at the time her husband was there sick. It is as follows:

I, Henry Charles Labrey, the undersigned, hereby certify and state that during the month of June, 1864, I was sergeant of Company B, Fifth New York Artillery Volunteers, then stationed at Harper's Ferry, Va.; that I became a patient in the regimental hospital situated at Bolivar, Harper's Ferry, Va.; that at the time of residence in the said hospital, George F. Fillis, a private of my company, was also admitted, and was

very sick; on the third or fourth night after his admission he was laboring under great apparent mental excitement; that several of the attendants of the hospital, to the number of three or four, used considerable physical force towards and on the said George F. Fillis; that I saw as many as three persons sitting upon his person at one time. A piece of wood was cut by one of them to answer the purpose of a gag, which was introduced into his mouth and used for such purpose; that he was butted and apparently strangled, and it was during such treatment that the said George F. Fillis died.

I further state that I do not know the names of the parties who committed such acts, and from my observation from the bed to which I was confined I am bound to believe that if such treatment did not actually cause, it certainly did materially hasten and accelerate his death.

There is also filed a statement of seven friends of the deceased soldier, who saw him while at home on the thirty days' furlough, who say:

We have met him at his home on many occasions during his thirty days' furlough, and in no instance have we ever seen him use nor under the influence of intoxicating liquors.

Joseph S. Cook (formerly of Saint Paul, Minn.) writes from Home Insurance Company, New York, March 10, 1870, corroborating statement about his habits while home on the furlough.

A favorable report to Congress from this committee seems to have been made at the second session of the Forty-fifth Congress.

Your committee are now of the opinion that there is a serious doubt as to the immediate cause of the soldier's death, and are inclined to give the benefit of the doubt to the soldier's widow. There is evidence before your committee to show that he was an honorable, courageous man. He had served out a full term of enlistment, returned to his command after a brief furlough spent with his family, and soon after his return is dead. The official records of the War Department do not agree as to the cause of death, and therefore your committee report favorably upon the widow's prayer, and recommend the passage of the bill (H. R. 135) granting a pension to Eleanor K. Fillis.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1664.

DOROTHEA BOTHNER.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2075.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4778) granting a pension to Dorothea Bothner, having had the same under consideration, beg leave to submit the following report:

The evidence in the case in the Pension Office shows that the petitioner is the widow of Gustavus Bothner, second lieutenant Company C, Thirty-eighth New York Volunteers, who enlisted as a sergeant May 7, 1861; mustered as second lieutenant December 12, 1862; received gunshot wound at battle of Fredericksburgh, Va., December 13, 1862, and whose resignation was accepted, on account of disability, by special orders, Headquarters Army of Potomac, February 16, 1863; and who died in New York, May 12, 1874, a pensioner on the rolls of the Pension Office at $7.50 per month from February 17, 1863.

The widow filed her declaration for pension June 30, 1874, which was rejected by the Pension Office on the ground "that the immediate cause of the officer's death was phthisis pulmonalis; remote cause unknown; was not the result of his wound."

The Adjutant-General's report and the Surgeon-General's report both show the wounding and treatment and the discharge of the officer for disability caused by the wound, and the certificate of W. J. Edgar, M. D., surgeon U. S. A., "that the soldier has partial paralysis of left arm from gunshot wound of lower part of left side and neck." (This appears to be a certificate on which to ground a leave of absence, and is dated February 16, 1863.)

B. A. Mylins, M. D. (filed August 15, 1872), testifies—

That he has attended the soldier for the last five years for neuralgia of his left shoulder and affection of the left lung, both caused entirely by a gunshot wound through the cord of the neck, the ball coming out of the left shoulder.

The same physician testifies, May 6, 1874—

That the shock to the muscles (by the wound) partly paralyzed the arm and side, causing a sluggish flow of blood through that lung; the cords of the lung fastening under the shoulder became diseased and gradually worked into the lung, producing several hemorrhages, so that he is finally prostrated and confined to the house. I give it as my opinion professionally that it is the direct result of the gunshot wound.

One of the examining surgeons of the Pension Office, at New York City, Dr. Thomas Franklin Smith, July 27, 1873, who examined the soldier for "increase" of pension, certifies—

> That the disability is total and permanent; that he is still suffering in consequence of said wound (describing it fully).

The board of examining surgeons, same city, April 1, 1874, examined him, and certify:

> Still suffering from gunshot wound (describing the wound). The disability originates entirely from the injury or disease on account of which he was originally pensioned, as follows: He has phthisis pulmonalis, third stage; is hectic; emaciated; has frequent attacks of hæmoptysis. His previous history is good. His father was 60 when he died of fever. Mother and six brothers and two sisters are living and healthy. While we are unable to state positively the connection between the wound and the disease of the lungs, we incline the doubt in his favor. He is confined to his room. Disability first grade and permanent.

On the 12th day of the next month (May) after this examination the pensioner died.

Your committee are of the opinion that the petitioner is entitled to the relief sought for under the bill introduced for her relief. The medical evidence (upon which the case must be decided) shows that the soldier suffered continuously, from discharge to time of death, from the gunshot wound; it shows intimate connection between the seat of the wound and the left lung, which became diseased and finally caused the soldier's death.

While the proof in the case may not have been sufficiently clear to satisfy the officers of the Pension Office under the strict rulings of the office, yet your committee believe this to be a meritorious case, and therefore report favorably upon the bill (H. R. 2075) granting a pension to Dorothea Bothner, and recommend the passage of the same.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1665.

LAGRANGE F. MORE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5576.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5576) granting a pension to Lagrange F. More, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office that the petitioner was a private in Company M, Eleventh New York Cavalry; enlisted September 16, 1862, and discharged May 28, 1864, to enable him to accept promotion as second lieutenant, One hundred and sixth New York Volunteers. His application for pension was filed June 1, 1878, alleging—

That after discharge, *en route* from New Orleans to New York, he was attacked with accute rheumatism, contracted really in Louisiana; reaching New York he was unable to proceed to his regiment, to be mustered on commission; he managed to get to his father's, at Fulton, N. Y., where he was confined to his bed for several weeks; then joined the One hundred and sixth New York Volunteers, near Washington, as second lieutenant; mustered out in June, 1865. His joints were drawn badly, and third finger left hand is still crooked from its effects, and at times almost helpless.

The Pension Office rejected the claim on the ground "not in the service at the date at which the rheumatism is alleged to have been contracted."

The claimant states that Dr. A. C. Livingstone, who first treated him for the rheumatism, at Fulton, N. Y., is dead, and he cannot procure his affidavit.

Allen L. Thompson, M. D., deposes—

That he has been well acquainted with claimant, personally, and that before entering the service he was a man of good habits and in good health, and to his best knowledge and belief claimant contracted rheumatism while in the service.

F. Dwight Stow, M. D., testifies to the same facts, and that he had rheumatism June, 1864.

E. A. Draper, late lieutenant, Company I, One hundred and sixty-first New York Volunteers, deposes—

That claimant, on or about May 29, 1864, while *en route* from the State of Louisiana, contracted rheumatism while on a government transport; that when he reached New York claimant was in a helpless condition, and affiant assisted him to a hotel, when he left him next day.

John N. Freeman, late surgeon One hundred and sixth New York Volunteers, deposes—

That when claimant *was mustered into* the One hundred and sixth New York Volunteers, *on or about July 10, 1864,* he was suffering from accute and articular rheu-

matism, for which he treated him; his joints were swollen, and the third finger of his left hand was drawn in towards the palm; he treated him as required until the time of his discharge.

M. C. Follett, M. D., testifies—

That since the fall of 1866 he has treated claimant for acute articular rheumatism several times, up to date of affidavit, June, 1879. He has been affected more or less, sometimes disabling him for weeks. He is never entirely free from it, and that it has not been aggravated or prolonged by intemperance or bad habits.

The Adjutant-General's report verifies the service of the petitioner, and states, "no record of contraction of rheumatism as claimed."

John L. Eddy, M. D., ex-surgeon Pension Office at Olean, N. Y. March 1, 1879, examined the claimant and certifies to his disability incurred in the service:

I find rheumatic affection of the synovial membranes about the joints, also of the muscular system, stiffness of the fingers—third finger of the left hand drawn toward the palm and anchylosed—attended with a great deal of pain through the limbs and left side. I know personally for several years he has been confined to his house and bed for weeks and months at a time with rheumatism. I find his disability from this cause entitling him to rank as total third grade, or $18 per month.

Your committee are of opinion that this is a meritorious case, and that the soldier is entitled to a place upon the pension rolls, for the reason that the disease showed itself so soon after he was discharged in Louisiana that the inference is very strong that it was contracted in the service and in the line of duty. It is true that the strict construction of the law in the case would not allow the Pension Office to admit the case to the rolls, but the evidence shows your petitioner was an able-bodied man at enlistment; that within a few days after leaving Louisiana he became affected with rheumatism, and that it has been continuous ever since that time.

Your committee therefore report favorably upon the prayer of the petitioner and recommend the passage of the bill (H. R. 5576) granting a pension to Lagrange F. More.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1666.

PHILIP SHULL.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4535.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4535) granting a pension to Philip Shull, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the Pension Office, in the case, that the petitioner was a private in Company H, Twenty-eighth Illinois Volunteers; enlisted March 13, 1865, and discharged March 15, 1866, and filed declaration February 29, 1872, alleging, "Accident at Sagetown, Ill.; injured lower part of spine by a fall in coming out of the ticket office.

The claim was rejected by the Pension Office April 19, 1877, on the ground, "barred under section 4717, R. S."

Dr. Daniel McM. Marshall testifies February 29, 1872, that "claimant left his residence a sound and healthy man."

Joseph Hicks and John Schlatter (comrades) testify, February 29, 1872:

That they were present at Sagetown, Ill., on March 13, 1865; knew claimant who slipped and fell while coming out of the ticket office and injured the lower part of his spine, and by continuous service the injury grew worse, and he was sent to the hospital at Brownsville, Texas, in October, 1865.

Joseph Hicks and George Cogswell testify, June 12, 1875, that—

Claimant was disabled, in line of duty, March 13, 1865, at Sagetown; while getting on the cars he fell from the platform of depot and wrenched his back, which at the time was considered of little importance, but continued to grow worse until he was discharged.

J. O. Anderson, testifies:

That on or about October 1, 1865, at Brownsville, Texas, claimant became unfit for duty; got a permit from the regimental surgeon, and with others carried claimant to the general hospital.

Claimant states, June 17, 1875:

That he has made every effort to obtain the affidavits of the officers of his company and from hisregimental surgeon, but has utterly failed; cannot learn their post-office address.

The physician who treated him during the time he was on furlough has left the State, and his post-office address is unknown.

Dr. J. D. Smith testifies, November 16, 1876:

Have known claimant during the years 1875 and 1876, and know him to be seriously disabled through the region of his kidneys. He also suffers from chronic diarrhea.

Dr. Daniel McM. Marshall testifies, February 29, 1872:

Have been acquainted with the claimant for seventeen years. About November, 1865, he applied to me for treatment; found him suffering from injury of the lower part of the spine, which renders him unfit to perform manual labor. He left his residence a sound and healthy man, and his disease has been continuous ever since my first examination of him after his discharge.

The Adjutant-General's Office reports:

For September and October, 1865, on furlough for sixty days from October 22, 1865. For November and December, 1865, on furlough, &c., "extended." January and February, 1866, "absent with leave." Muster-out roll, dated March 15, 1866, reports him "absent on furlough"; furlough extended February 5, 1865 by "surgeon's certificate." Mustered out by chief mustering officer of Illinois April 5, 1866, to date from muster-out of company (March 15, 1866). Returns for 1865 are incomplete as to Company H. Records do not give further evidence as to disability.

The Surgeon-General's Office reports:

Was admitted to separate brigade hospital, Brownsville, Texas, October 3, 1865, for treatment for debility; returned to duty October 22, 1865. Records of Brownsville, Texas, furnish no evidence of this soldier previous to October 3, 1865.

The examining surgeon of the Pension Office at Briggsville, Illinois, August 4, 1875, before whom the soldier appeared, says:

I find no evidence of nephritis. There exists partial paralysis of the lower extremities, probably caused from an injury to the spine received, as he states, on the 13th March, 1865.

He does not rate him for any disability.

Your committee are of the opinion that the petitioner has clearly established the fact of an injury received in the service and of continuous treatment therefor; he cannot, after persistent effort, procure the testimony of the regimental surgeon, or of a commissioned officer, and yet this failure should not debar him from being pensioned according to his disability; nor should he be barred by the statute of limitations, as was done in the rejection by the Pension Office. Therefore your committee report favorably upon the case, and recommend the passage of the bill (H. R. 4535) granting a pension to Philip Shull.

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TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1667.

WILLIAM F. JOHNSON.

E 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 892.]

e Committee on Invalid Pensions, to whom was referred the bill (H. R. 92) granting an increase of pension to William F. Johnson, having had he same under consideration, beg leave to submit the following report:

t appears from the evidence filed in the case in the Pension Office t the petitioner was a sergeant of Company H, Eighty-fourth Illinois lunteers; enlisted July 28, 1862; discharged August 10, 1865, on cer-cate of disability—

ecause of amputation of the right leg below the knee, caused by a gunshot wound ived at the battle of Altoona, Ga., May 3, 1864; disability total.

'he action of the Pension Office in the case has been as follows:

ensioned from August 10, 1865, at $8 per month, an account of loss right leg.
ıcreased to $15 from June 6, 1866.
ıcreased to $18 from June 4, 1872.

An application for further increase was filed March 16, 1876, "alleging ıshot wound of leg, amputated below knee, reamputated at knee." 'his application was rejected by the Pension Office June 28, 1876, on ground "reject, leg not amputated *at* knee joint, see opinion of dical referee attached," which opinion is as follows:

he head of the fibula does not enter into the knee joint—is not one of the factors of t joint—so that the removal of its head does not constitute an amputation "at" joint in any sense.

The certificate of P. Gregg, M. D., acting assistant surgeon, U. S. A., charge post hospital Rock Island Arsenal, dated January 25, 1876, tes:

hereby certify that, in the year 1864, William F. Johnson, sergeant Company H, hty-fourth Illinois Volunteer Infantry, was admitted to this hospital. His right had been amputated below the knee, and, either in consequence of deficient flap ubsequent sloughing, the bones protruded and became necrosed. It was deemed ssary by myself and Dr. Watson, then in charge, to reamputate. On the 17th , 1865, I performed the operation. It was necessary to remove the head of the la. The joint is useless for any practical purpose.

xamining Surgeon Craig, 15th April, 1876, "finds leg amputated so r joint as to render no service whatever; disability total; second le, $24."

These are the facts in the case, and the petitioner seeks, by the l introduced for his relief, the increase, according to his disability, deni by the Pension Office.

Your committee are of the opinion that the soldier is entitled to increase of pension to rate in measure with his disability, declared the examining surgeon to be total, second grade. Dr. Gregg also sa "the joint is useless for any practical purpose." We prefer to acc the positive testimony of the two surgeons, who had a practical kno edge of the facts, to the theoretical ruling of the medical referee of t Pension Office, whose narrow construction of the law denied the sold the increase of pension to which your committee believe he is entitl We therefore report favorably, and recommend the passage of the (H. R. 892) granting an increase of pension to William F. Johnson.

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6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1668.

SAMUEL BURWELL.

NE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3772.]

he Committee on Invalid Pensions, to whom was referred the bill (H. R. 3772) granting a pension to Samuel Burwell, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence submitted in the case that the petitioner ras a private in Company C, Twentieth Minnesota Volunteers, enlisted une 27, 1861, and was discharged March 28, 1862—suffering from a se-ere attack of piles. The petitioner returned to his home in Minnesota nd engaged in enlisting soldiers for the Army, and of Company B, enth Regiment Minnesota Volunteers; was appointed second lieuten-nt on June 21, 1862. Afterwards, in December, 1863, he was appointed rst lieutenant of the same company, until his final discharge on the 21st ugust, 1865, at Fort Snelling, Minn.

At the date of his first enlistment, in 1861, the petitioner was a well-reserved and vigorous man, 55 years of age; he served from the date of nlistment, excepting about three months in 1862 (and then he was re-ruiting men for the service), during the entire war of the rebellion; was tne battle of Mill Spring, Ky., and all the other battles in which his egiment was engaged during the war.

The soldier, now seventy-four years of age, petitions Congress to pro-ide a support for him in his declining years, alleging that he is poor, nd does not wish to fill a pauper's grave, after having served his coun-ry faithfully in the time of need.

The relief prayed for, if granted, must be in the nature of a gratuity ension, and your committee have decided to report favorably upon the rayer of the petitioner, and recommend the passage of the bill (H. R. 772) granting a pension to Samuel Burwell.

O

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1669.

HEIRS OF AARON A. SHERIDAN.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the follo wing

REPORT:

[To accompany bill H. R. 2945.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2945) granting a pension to the heirs of Aaron A. Sheridan, beg leave to report:

It appears from the evidence filed in the case, that the said Aaron A. Sheridan, deceased, was the light-house keeper on South Manitou Island, State of Michigan, who was drowned with his wife and a child while returning to the island from the mainland March 15, 1877.

Christian Anderson in his affidavit says:

They went for the purpose of taking over government mail or papers, as I understood, and were drowned by the capsizing of the boat on their return. I was with them when they were drowned; I went with them on the trip to assist in handling the boat; I have always been used to boats, and I consider this boat unsafe and entirely unfit for the station. She has always been considered a dangerous boat and one that could not stand a heavy sea.

Other witnesses corroborate Anderson's statement, and one of them says that the Light-House Department had promised to provide another boat which would be safe, but failed to do so.

The deceased left five minor children of tender years without means of support, who are now under the guardianship of Orson Dolph, of Bristol, Kendall County, Illinois.

Your committee are of the opinion that the case possesses merit, and that a gratuity pension should be allowed for the maintenance of the children until the age provided by law, and therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 2945) granting a pension to the heirs of Aaron A. Sheridan.

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1670.

MIRIAM V. KINNEY.

NE 4, 1890.—Committed to the Committee of the Whole House and ordered to be printed.

r. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2650.]

e Committee on Invalid Pensions, to whom was referred the bill (H. R. 2650) granting a pension to Miriam V. Kinney, having had the same under consideration, beg leave to submit the following report:

The petitioner claims a pension as the widow of Samuel W. Kinney, ho was executed as a spy at Tullahoma, Tenn., under the orders of eneral Braxton Bragg, in the spring of 1863. His execution as such, ter a trial by a court-martial, is clearly proven by Capt. Lemuel Oli- r, an eye-witness of it, and who is well known as a citizen of Pulaski, nn., of character and influence. The employment of the said Samuel . Kinney in the secret service of the United States is also clearly oven by a letter of General J. S. Negley, which is on file, and the arriage of Miriam V. Fox to the said Samuel W. Kinney is also early proven. Samuel W. Kinney was not regularly mustered into e service of the United States as a soldier, and his widow cannot for at reason receive a pension under the general law; but he was em- oyed by competent authority in a service more dangerous than the gular service in the field in the discharge of which he lost his life.

Your committee are therefore of the opinion that the facts of this case title the pensioner to a pension, if pensions should be given in such ses; and as the precedent has been established, and the equities of e case demand it, we therefore recommend the passage of the bill (H. 2650) granting a pension to Miriam V. Kinney.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1671.

CAPT. J. R. MADISON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 886.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 886) granting a pension to Capt. J. R. Madison, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office, that the petitioner was second lieutenant and captain Company I, Nineteenth Illinois Volunteers; was mustered to date June 17, 1861, and discharged, by resignation, December 19, 1862, based upon surgeon's certificate of disability (chronic diarrhea) given at Nashville, Tenn. His declaration for pension was filed October 14, 1875—

Alleging rheumatism and injury of left side. Was seized with rheumatism at Bird's Point, Mo., on or about September 1, 1861, while doing guard duty, by reason of exposure to cold and inclement weather; was injured in left side near lower ribs at Nashville, Tenn., on or about November 10, 1862, by being thrown from his horse while visiting the pickets at night as officer of the day; horse being frightened, shied to one side and threw him.

Prior to service, his family physician, Dr. E. Jones, testifies—

That at enlistment he was in sound physical and bodily condition, and free from rheumatism or any injury in left side.

Lieutenant Jhongham testifies—

That he was seized with rheumatism on or about September 1, 1861, at Bird's Point, Mo., while doing guard duty, in inclement weather; that he was injured in the left side near the lower ribs at Nashville on or about November 19, 1862, by being thrown from his horse while visiting the pickets at night, as officer of the day.

Regimental Surgeon R. G. Bogue testifies—

That in the autumn of 1862, while on duty at Nashville, claimant received a fracture of his ribs, or a separation of the ribs from the costal cartilages of the lower part of the left side, for which he was under treatment, soon after which he resigned. There is now deformity of this side as a consequence of said injury. I, in part, had the care of this case at the time. (Testimony filed November 16, 1876.)

E. Jones, M. D., also testifies—

That on the return of claimant from the Army he was suffering severely from rheumatism and an injury to left side of body near lower ribs; his rheumatism was located in left hip and thigh, extending down to the knee. I treated him for said disabilities on the following dates: From the last of December, 1862, for a considerable length of time, and afterwards prescribed for him until 1866. The disabilities have been continuous. (Filed February 2, 1876.)

The Adjutant-General's report states:

Return for November, 1862, reports him: "Captain sick in hospital at Nashville."

The Surgeon-General's report states:

First Lieutenant J. R. Madison was admitted to regimental hospital February 1, 1862, with febris remitt.; disposition not given. Was admitted to No. 14 general hospital, Nashville, Tenn., December 4, 1862 (as Captain Madison).

George F. Craig, M. D., examining surgeon of the Pension Office at Rock Island, Ill., December 29, 1876, certifies to an examination of claimant as follows:

In my opinion three-fourths incapacitated. It is my opinion that the disability did originate in the service. The disability is permanent. Has constant pain, varying in intensity, in the outer surface of the left thigh, which is somewhat atrophied; the muscles compared with the right thigh are flabby, and sensation is partially lost. The limb is weak and lame; disability one-half. Was thrown from a horse, and the seventh, eighth, and ninth ribs were torn or broken from their costal attachments left side. The costal cartilage at that point seems to rest upon the ribs, making an osseous tumor the size of a hen's egg. Cannot lift heavily or twist the body. Habits, regular disability one-fourth.

The Pension Office rejected the claim February 9, 1877, as follows:

Rejection; inability to furnish satisfactory testimony showing that alleged disabilities were contracted in the service in the line of duty. (Injury of left side.) Rheumatism not established.

Your committee are of the opinion that the petitioner has established the fact of his injury in the service by the testimony of his lieutenant and the regimental surgeon, which the Pension Office seems to have overlooked or ignored entirely. Dr. Jones testifies to his treatment of the petitioner at and after his discharge, and the examining surgeon finds the same disability existing at the time of his examination of the petitioner. Therefore, your committee report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 886) granting a pension to Capt. J. R. Madison.

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ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
ession. } { No. 1672.

ANN JANE MACKEY.

880.—Committed to the Committee of the Whole House and ordered to be printed.

SON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6396.]

mittee on Invalid Pensions to whom were referred the petition of Ann Jane Mackey, of New York City, and the bill granting a pen- o Ann Jane Mackey, with the accompanying papers, having had the under consideration, beg leave to submit the following report:

etitioner is the widow of Thomas N. Mackey, who enlisted in the Battery, New York Light Artillery, October 31, 1861, and was d at the battle of Fair Oaks, Virginia, May 31, 1862, and d a prisoner of war until May 19, 1863, when exchanged; then Camp Parole, Annapolis, Md., where it is supposed he was shot tally and killed by one of the guards, although there is no official of the fact.

Adjutant-General's records report the soldier "missing, dropped e rolls, supposed to be dead."

widow's claim for pension was rejected by the Pension Office , 1872, on the ground that—

> not prosecuted to successful issue within five years from the date of filing, ng no record evidence in the War Department to establish the claim.

J. A. Bentley, Commissioner of Pensions, says:

> t doubted that the soldier is dead, but, in absence of the circumstances under received the wound which terminated in death, this office cannot take action under the general pension law.

widow in the present application says that she was informed by ant Navin, of her husband's battery, that he was accidentally shot p Parole, Annapolis, Md., about June 30, 1863; some of the sol- the camp had mutinied, and while looking on, her husband, by a shot from the guard, was killed.

evidence was not accepted by the Pension Office, not being from l knowledge of the fact.

ugh this is a remarkable case in some of its details, your com- hink it is a meritorious one, from the statements and evidence ed; and the Pension Office, while compelled by the technical nents of law to reject the claim, have tacitly admitted the merits etitioner's application.

haracter and high standing of the petitioner is attested by some ost prominent men of the city in which she resides, and also by *tors of the church in which* she holds membership, and it is

therefore but reasonable to infer that her statements are truthful in every particular. She states under oath in the application that she has never been able by diligent efforts to "obtain the testimony of any one having personal knowledge of the particulars of her husband's death."

Your committee, therefore, in view of all the foregoing facts, report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 6396) granting a pension to Ann Jane Mackey.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1673.

RUHANNA NELSON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6397.]

The Committee on Invalid Pensions, to whom was referred the bill granting a pension to Ruhanna Nelson, widow of Aaron Nelson, of Captain Ketcham's company United States infantry, war of 1812, *having had the same under consideration, beg leave to submit the following report:*

The brief in the Pension Office contains a full history of the case, and it is submitted entire, as follows:

Widow's claim No. 11250.—Soldier Aaron Nelson.

Claimant alleges that Aaron Nelson served in Captain Ketcham's company volunteer infantry.

Adjutant-General reports, under date of January 19, 1875, that Aaron Nelson was enlisted March 4, 1814, and served in Capt. D. Ketcham's company, Twenty-fifth Regiment United States Infantry; company book 1814; absent October 31, 1814; and deserted from command at Canandaigua, N. Y., November 5, 1814.

Pension was granted this soldier, to commence October 29, 1852, for a wound received in battle of Chippewa, war of 1812.

In this claim (invalid) service was established upon the report of the Third Auditor of November 27, 1852, which recites "that Aaron Nelson enlisted March 4, 1814, and has been traced on the rolls of his company up to August 31, 1814." Bounty land was granted soldier under act of 1850, "jacket indorsed 160 acres allowed upon the testimony within and evidence in invalid pension files."

Disability established by surgeon's certificate and by the testimony of P. W. King, private in Captain Bean's company of the Eleventh Regiment United States Infantry, and of Eli French, corporal in Captain Hall's company, Ninth Regiment United States Infantry. King states in his affidavit that "they were both in the battle of Chippewa, and that the said Nelson was wounded by a musket-ball in the side or hip, and was sent to hospital at Buffalo, where he remained several weeks; that the said Nelson rejoined his company at Fort Erie in September following. A few days afterwards was severely injured in the breast by being struck with a stone. * * * That the said Nelson continued with the Army in a feeble state of health till some time in October, when they left Buffalo for winter quarters; that he, the said Nelson, was taken sick on the road and left at a private house in the town of Marlin."

The testimony of French is in reference to the wound only.

The Adjutant-General, under date of February 24, 1875, declined to change the record of this soldier on the testimony submitted. Shall the action of the office in the invalid pension and bounty land claim be regarded as sufficient to establish a pensionable service under act of March 9, 1878?

COMPTON (*Ex.*).

Across the face of this brief appears the following indorsement:

The Commissioner says that as the law requires that soldiers should have been honorably discharged *to give title to pension*, we cannot allow this case. But he states

that this case is meritorious. It should be reported to Congress under order of Commissioner of August 14, 1877. Please prepare a slip under said order for me.

N. H. W.

APRIL 24, 1879.

The Pension Office rejected the petitioner's claim for pension June 2[illegible], 1879, upon the grounds above stated.

There is filed with your committee an affidavit of George Page, M. D[illegible], dated December 27, 1879, who states:

That he well knew Aaron Nelson, and that while he (affiant) was examining surgeo[illegible]n the said Aaron Nelson made to him the following statement: "That while a membe[illegible]r of Captain Ketcham's company he was taken sick and had a protracted run of fever [illegible]; that he was left at a farm-house and remained there some twelve weeks. That durin[illegible]g his sickness his term of service expired, the war closed, and peace was declared; tha[illegible]t when he recovered he was advised to return to his home, which he did, and not bein[illegible]g present when his company was discharged he was entered on the rolls as a deserter.[illegible]" The soldier died April 20, 1874.

Your committee are of the opinion that the old soldier told the truth[illegible]h, and that his widow should be allowed the pension granted her husban[illegible]d during his lifetime. We therefore report favorably upon the prayer o[illegible]of the petitioner, and recommend the passage of the bill entitled "A bi[illegible]ill granting a pension to Ruhanna Nelson, widow of Aaron Nelson, of Ca[illegible]p-tain Ketcham's company United States infantry, war of 1812."

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1674.

JOSEPH McHENRY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6398.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6398) granting a pension to Joseph McHenry, having had the same under consideration, beg leave to submit the following report:

The petitioner was a civil employé of the Quartermaster's Department, and the facts in the case are clearly set forth in a letter, filed with your committee, from Maj. James W. Shaw, Forty-fourth Ohio Infantry (or Eighth Ohio Cavalry, being the same regiment):

During the late war McHenry was employed constantly as a teamster in the Quartermaster's Department, and although frequently in a perilous position, yet still escaped injury. At the battle of the Wilderness, a corps on the left had exhausted its ammunition, and it was necessary to uspply it from the train, which was on the extreme right. The only available road led through the woods, then on fire, and for a part of the way between the lines of the two armies. The train was started, and when the fire was reached many drivers fled from their wagons; McHenry was put in front with orders to go through, which he did. Fortunately the smoke prevented the rebels from seeing the train, but when it lifted, as it did, the enemy made things quite interesting. A sufficient number got through, however, to replenish the ammunition of the corps. All this I have from a staff officer who personally witnessed it. I mention this one instance to show that the service of a teamster was often as perilous as that of the soldier.

At the close of that campaign McHenry was sent to Washington to help break in a train of green mules. One evening, while hanging up the harness on a peg behind one of his teams in the stable, a mule kicked him upon his right arm, causing a compound fracture of the bone. He was removed to Army hospital, where eventually the arm was amputated at the shoulder. The Surgeon-General has allowed McHenry commutation for the loss of the arm under act of February 27, 1877. In the papers on file there are proofs of McHenry being in the quartermaster service at the date of the injury, of his treatment in hospital, and the amputation, and of the circumstances of the receipt of the injury.

There are a great many precedents for the granting of a pension to McHenry. In the last session Forty-fifth Congress a pension of, I think, $50 per month was granted John S. Hall, of West Virginia. Hall was a civilian teamster, and was sent from one division to another with rations. He laid out one night and caught a cold, resulting in fever. He was pensioned for blindness, the result of that fever, but the blindness only supervened within the last two years; a long distance from cause to effect.

McHenry's disability is original, and not the result of another disability. His wife is dead, leaving him two little children to take care of. The loss of his right arm, at the shoulder, too, renders it impossible for him to perform any manual labor. Without the aid of a pension I do not know what will become of him and his motherless babes. Unless the two houses make fish of some and flesh of others, McHenry will surely receive a pension.

Should you desire to know further who I am, Mr. McMahon, M. C., will give you

the information. I served through the whole of the late war, and was wounded four times.—[Letter dated January 13, 1879, and addressed to Hon. A. V. Rice, M. C., Fifth Congressional District Ohio.]

In view of the precedents which have been made in similar cases, and having in view also the very serious nature of the injury, incapacitating this man entirely from earning a subsistence by manual labor, your committee are of the opinion that a pension should be granted equaling his disability. They therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 6398) granting a pension to Joseph McHenry.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1675.

BELINDA McDONALD.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6399.]

The Committee on Invalid Pensions, to whom was referred the petition of Belinda McDonald, having had the same under consideration, beg leave to submit the following report:

The petitioner is the widow of the late Col. Christopher R. McDonald, of the Forty-seventh New York Volunteers, who died October 16, 1874. She was allowed a pension of $30 per month by act of Congress approved February 9, 1879, and has been paid from the date of the passage of said act.

The present application is for the arrears of pension from the date of her husband's death to the date of the passage of said act at the same rate of pension which she is now paid.

The application is just and reasonable, and having in view the precedents established in similar cases, and the merit and justice of the claim, your committee report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 6399) granting arrears of pension to Belinda McDonald.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1676.

JAMES F. ROSE.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6400.]

The Committee on Invalid Pensions, to whom was referred the petition of James F. Rose, of New York City, having had the same under consideration, beg leave to submit the following report:

The petitioner enlisted as a private in Company E, One hundred and seventy-sixth Regiment, New York Volunteers, in November, 1862, and served out his term of enlistment; afterwards was an employé in the quartermaster's department at Nashville, Tenn. While in the service he contracted typhoid fever, which resulted in inflammation of the eyes, from which he became totally blind. He has a wife and two children dependent upon him for support, and petitions Congress for a pension in the shape of a gratuity to enable him to support them.

In support of his petition we find the indorsement of nearly all the line and staff officers of the One hundred and seventy-sixth Regiment, New York State Volunteers, testifying to the worth of petitioner as a soldier and to his helpless condition, with a family dependent upon him for support.

David D. Terry, the captain of his company while in service, states that the petitioner while in government employ at Nashville was injured, in the line of duty, by loss of the thumb of his left hand

John P. Garrish, M. D., testifies that the petitioner is irrecoverably blind.

Your committee are of the opinion, judging by the character of the men who indorse the application, that the soldier is worthy of relief in the shape of a gratuity pension. It seems very probable that the disease of the eyes was a result of the fever, and we have positive evidence of the injury to the hand, which increases his disability. We therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 6400) granting a pension to James F. Rose.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1677.

CALVIN H. FRENCH.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6401.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6401) granting a pension to Calvin H. French, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence in the case on file in the Pension Office that the petitioner was a private of Company M, Third New York Cavalry; enlisted August 21, 1862, and discharged June 7, 1865. The declaration for pension was filed April 3, 1874, alleging injury of hip and spine received at New Berne, N. C., April 1, 1863; claimant also alleges his inability to find the surgeon who treated him for his injury in service, or the physician who treated him immediately after his discharge, for the reason that the said physician is dead.

The Pension Office rejected the claim on the ground "No evidence of injury or disability on the records of War Department; claimant unable to furnish medical evidence of treatment in the service, or at date of discharge."

Capt. N. P. Pond, of claimant's company, in an affidavit dated April 2, 1874, says:

> The said Calvin H. French was a private in said organization, and while in the line and discharge of duty, while on a march with his regiment, and while riding rapidly over a bridge across a stream, about twenty miles from New Berne, in North Carolina, was injured as follows: A plank gave way under the forward feet of his horse, and the horse was thrown down, falling upon him and injuring his hip and spine.

J. T. Keables, M. D., examining surgeon Pension Office, July 15, 1874, examined claimant and found him—

> One-half incapacitated, which, in my opinion, did result from the service; disability permanent. He has received an injury of lumbar vertebra; this affects him in such way that he has but little use of his lower extremities, and prevents him from performing ordinary manual labor. The muscles of the leg are atrophied, his toes incline to drag; for instance, to go up stairs, he has to assist his legs by aid of his hands; this condition is caused by the injury done his back. He is feeble; hence he feels the injury more than if he were strong.

Your committee are of the opinion that the soldier was injured in the service in the line of duty. His captain testifies positively to the fact. The claimant states the physician who treated him is dead, but the certificate of the examining surgeon tells the nature and extent of the injury, and rates him for it. Your committee report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 6401) granting a pension to Calvin H. French.

5TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1678.

MARY ANN MAY.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6402.]

The Committee on Invalid Pensions, to whom was referred the petition of Mary Ann May, having had the same under consideration, beg leave to submit the following report:

It appears that the petitioner is the mother of James B. May, who was drafted into the service of the United States in July, 1863; was sent to Riker's Island, New York, where he contracted disease soon after his arrival, for which disease he was sent to Soldiers' Home Hospital, corner of Lexington avenue and Fifty-first street, New York City, where he died of said disease August 10, 1863. The soldier left a widow, who afterwards remarried, and the petitioner, whose only support he was during his lifetime, as he was her only son. The petitioner is now seventy-seven years of age and wholly blind.

The present application is to grant a pension to this poor widow in her declining years, and your committee, in view of the precedents in similar cases, are inclined to grant the request, and therefore recommend the passage of the bill (H. R. 6402) granting a pension to Mary Ann May.

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TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1679.

STEPHEN MANCHESTER.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

:. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5570.]

e Committee on Invalid Pensions, to whom was referred the bill (H. R. 5570) granting a pension to Stephen Manchester, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence filed in the case in the Pension Office at the petitioner was captain of Company C, Ninety-seventh New York olunteers; mustered into service February 18, 1862, and discharged on the following medical certificate September 9, 1862:

do hereby certify that I have examined this officer and find that he has a malig- nt tumor of the nates requiring immediate operation and a change of locality to vent permanent disability, and in consequence thereof he is, in my opinion, unfit duty.

further declare my belief that he will not be able to resume his duties in a less od than sixty days.

G. N. HATCH,
Acting Assistant Surgeon, U. S. A.

ASHINGTON, D. C., *September* 9, 1862.

ountersigned as follows:

riod of recovery remote and uncertain; disability entire; discharge respectfully mended, with permission to repair to his home for immediate treatment.

he Adjutant-General reports the Ninety-seventh Regiment New York unteers was in action at Thoroughfare Gap, Virginia, August 28, 2.

he petitioner filed declaration for pension August 18, 1873, alleging—

hat at Thoroughfare Gap, August 28, 1862, he was injured by the bursting of a l and pieces striking him in the shoulder and hip; that that in the hip has caused inor.

he Pension Office rejected the claim "on report of special agent—ability existed prior to enlistment."

he testimony of lieutenant of claimant's company, T. Walters, filed ril 2, 1875, states—

hat he became acquainted with claimant when the regiment was first mustered, 1861; was present with the company at battle of Thoroughfare Gap, Virginia, gust 28, 1862; that the regiment was lying behind one of the batteries that was lling the enemy; that the fuse of the shells being short some of them bursted over regiment and one piece of shell struck claimant on the left shoulder and right hip l injured him. He would have fallen had not affiant caught him. The hip was dly bruised.

The testimony of Dr. W. Booth (filed April 18, 1878) shows that—

Claimant was sound for four years previous to enlistment, as far as he knows and believes. Has seen him frequently since his discharge and has never treated him for any disease. Examined him this day and finds a hard tumor in right gluteal region; the tumor is evidently bony and directly over right hip joint.

Dr. John B. Nold, ex-surgeon Pension Office at Oneida, N. Y., May 11, 1878, found the claimant—

Incapacitated, &c., and it is my belief that the said disability did not originate in the service.

Malignant tumor, right hip, alleged to have been caused by a shell. I find at the present time no sign or any marks of a wound up the tumor or right hip. It is my belief that he never was wounded there by a shell. Even a contusion by a shell would have left some marks. Late officers of the Ninety-seventh Regiment now in Boonville say that they have known Stephen Manchester before he went into the service in the late war, and that they know he had a tumor before he entered the Army.

This case was thoroughly examined by a special agent of the Pension Office, whose report, dated August 10, 1878, is in the evidence before your committee. It contains the affidavits of nine fellow-townsmen of the petitioner and his own affidavit. The principal witnesses proving that the petitioner had tumor at enlistment are Edward Richards and Frederick T. Clarke, tailors, who swear they measured and fitted him for clothes before 1861, and the lump or tumor was on the side; prominently so. Also Dr. William Cordell, who testifies that claimant asked him to examine the lump on his hip. "This was before the war."

Your committee are of the opinion that the evidence in this case certainly favors the ruling of the Pension Office. The few days only which elapsed between the time the petitioner claims to have been wounded and the date of discharge certificate could hardly produce a *malignant* tumor. The examining surgeon fails to find the least indication of a wound. All this seems to confirm the justice of the rejection.

Your committee therefore report adversely upon the prayer of the petitioner, and ask to be discharged from the further consideration of the bill (H. R. 5570) granting a pension to Stephen Manchester.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1680.

MARY VAN GORDON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5152.]

The Committee on Invalid Pensions, to whom was referred the petition of Mary Van Gordon, accompanied by a bill (H. R. 5152), having had the same under consideration, beg leave to submit the following report:

We find from an examination of the papers on file in the original pension claim that the petitioner is the mother of Alpheus G. Van Gordon, who was a private in Company C, Ninety-eighth New York Volunteers, and upon whose death in the service the claim for pension is made.

The question involved in the case is the dependence of the mother upon the soldier, and it was rejected in the Pension Office upon the ground that she was not dependent upon him at the time of his death. The case was investigated by a special agent of the Pension Office, who took very full testimony upon the question at issue; his report covers all the ground, and from it your committee reach the conclusion that neither the law nor equities of this case render it meritorious.

The evidence shows that the husband of the petitioner, with three of his sons, was in the Army; that after a year or two of service the husband was discharged, returned to his home, and resumed his avocation as a stone-mason, at which trade he worked and earned a comfortable living for himself and family, and that up to 1871 the petitioner lived with her husband, he furnishing a support for her; during that year they separated, and in November after the separation the application for pension was filed.

The principal witnesses by whom the dependence is shown are the husband, sons, and relatives of the petitioner, and the cross-examination of the special agent in many instances proves the fallacy of their original statements. Evidence has been placed before your committee with the petitioner's statement, which is simply a repetition of that already disproven by the special agent's examination.

In view of these facts, your committee report adversely upon the petition, and ask to be discharged from the further consideration of the bill (H. R. 5152) granting a penson to Mary Van Gordon.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1681.

ABRAHAM ALSTEAD.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3103.]

e Committee on Invalid Pensions, to whom was referred the bill (H. R. 3103) for the relief of Abraham Alstead, having had the same under consideration, respectfully report:

We find from an examination of the papers in the pension case that e petitioner is pensioned at the rate of $8 per month for gunsho ound of right shoulder, he having received the wound October 22, 1862, which date he held the rank of first sergeant, and his pension was ed according to that rank. The bill presented to your committee reases the pension to $15 per month. The pensioner was dropped m the rolls at his own request October, 1870, and was afterwards nstated.

Your committee believe that the pensioner is drawing the full amount which he is entitled under the law and in accordance with the report the examining surgeon of the Pension Office. We therefore report versely upon his petition, and ask to be discharged from the further nsideration of the bill (H. R. 3103) for the relief of Abraham Alstead.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1682.

JAMES H. STEVENS.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5454.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5454) granting an increase of pension to James H. Stevens, having had the same under consideration, beg leave to submit the following report:

It appears from an examination of the papers in the case in the Pension Office that the petitioner was captain of Company C, Eighty-third New York Volunteers; enlisted May 27, 1861; discharged December 3, 1862; and filed declaration for pension May 14, 1879, alleging—

On or about 18th, 19th, or 20th of August, 1862, at Rappahannock Station, Va., the drums of his ears were severely injured by the continuous discharge of heavy artillery; that on the march from Hall's Hill, Virginia, September 6, 1862, he was taken sick with neuralgia, pains in his ears, and diarrhea; also, numbness of the whole left side of his body.

The Pension Office granted pension as follows:

Rate, $5 per month, commencing December 14, 1862, and $10 per month, commencing May 31, 1879. Disabled by partial deafness; not disabled by diarrhea since discharge.

Your committee are of the opinion that this is not a proper case for the intervention of Congress, to overrule the decision of the Pension Office. The evidence is full and complete, showing the soldier's service, his injury, and treatment therefor; and the Pension Office has granted the pension according to the rating of the board of examining surgeons who examined him. Your committee therefore report adversely upon the prayer of the petitioner, and ask to be discharged from the further consideration of the bill (H. R. 5454) granting an increase of pension to James H. Stevens.

)ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1683.

LOUIS MAGNUS.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

ASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3071.]

mmittee on Invalid Pensions, to whom was referred the bill (H. R.) granting a pension to Louis Magnus, having had the same under deration, beg leave to submit the following report:

)pears from the evidence on file in the case in the Pension Office etitioner was a corporal in Company G, Twentieth New York Artillery; enlisted October 5, 1861; discharged October 14, 1864; d declaration for pension October 28, 1875, alleging—

while in the service and line of duty he contracted bleeding of the rectum, y chronic dysentery, and that about the last of June, 1864, while on the march the Wilderness, Virginia, he received an injury of his left side by a fall in t-time, producing severe and constant pain in the side.

Pension Office rejected the claim on the ground—

ord of the alleged disability, and inability to furnish the necessary evidence ct it with the service. No disability in a pensionable degree.

olas F. Eberhard, an intimate acquaintance of claimant, testifies, 25, 1876, that the claimant was before and at his enlistment a well man.

m Howard, adjutant of claimant's regiment, testifies, October 28, hat he was a sound man at enlistment.

). S. Paine, assistant surgeon of the regiment, testifies, October 5, that claimant was sound at enlistment, and continued so until 864, when, while in the line of duty, he contracted chronic dysen- nd also sustained an injury to the left side by a fall while on and that on account of these disabilities he (affiant) sent him ity Point to hospital at Alexandria.

William H. Wilson, October 28, 1875, and William C. Krog, r 28, 1875, testify to the treatment in October, 1874, for hemor- of the rectum.

N. H. Krause, March 26, 1877, testifies to treatment since Octo- 76, on account of the effects of a fall; that claimant is suffering chest and abdomen and prolapsus of the rectum, and that he is citated from performing manual labor.

Adjutant-General reports: March and April, 1864, present for May and June, 1864, absent, sick, in hospital, City Point, Va.; r 18, 1864, New York City, reports him mustered out to date r 14, 1864.

Surgeon-General reports: Admitted to first division hospital, V.

A. C., date not given; transferred June, 1864, diagnosis not given; entered V. A. C. general field hospital, City Point, June 25, 1864, sick; entered general hospital, Alexandria, July 2, 1864, with debility (no other diagnosis), and transferred to New York to be mustered out.

The board of examining surgeons, New York City, October 18, 1876, certify "that we discover no injury of the side, nor do we discover a disease of the rectum."

The examining board, same place, December 12, 1877—

We find that internal piles exist, which will no doubt account for the hemorrhage. No physical evidence of injury to left side.

Your committee are of the opinion that this is not a case which calls for the intervention of Congress. The decision of the Patent Office appears to have been just in the case, there being no connection shown between the injury received in service and present disability (if any). Therefore your committee report adversely upon the prayer of the petitioner, and ask to be discharged from the further consideration of the bill (H. R. 3071) granting a pension to Louis Magnus.

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ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1684.

JOHN HOPPER.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

ISON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1441.]

mmittee on Invalid Pensions, to whom was referred the bill (H. R. granting a pension to John Hopper, having had the same under con- ıtion, beg leave to submit the following report:

find, upon an examination of the papers in the case on file in the ı Office, that the petitioner was a captain in the Sixty-sixth Regi- lew York Volunteers; applied for pension February 27, 1871, ; injuries received at the battle of Fredericksburgh, Va., and that lication was rejected August 20, 1879, upon a report of a special f the Pension Office, who made a special examination of the case. vestigation shows conclusively to the mind of your committee e diseases which the petitioner alleges were contracted in the :xisted prior to enlistment, and the evidence therein further in- ;our committee to believe that the petitioner is in no way worthy. ıerefore report adversely upon the case, and ask to be relieved e further consideration of the bill (H. R. 1441) granting a pension ı Hopper.

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)ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1685.

CATHERINE DEMPSEY.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

ISON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5229.]

mmittee on Invalid Pensions, to whom was referred the bill (H. R. granting a pension to Catherine Dempsey, having had the same consideration, beg leave to submit the following report:

pears from the evidence on file in the case in the Pension Office e petitioner is the widow of Dennis Dempsey, deceased, late a of Company G, One hundred and seventy-ninth Regiment New olunteers, who enlisted June 4, 1864, "and mustered out of servhonorably discharged with his company (as appears from Adjutneral's reports) on muster-out roll dated June 8, 1865"; and who nd drowned at Elmira, N. Y., where company had been sent to tered out June 19, 1865.

widow filed application for pension November 20, 1866, which ected by the Pension Office, and rejection affirmed March 30, Soldier on a pass when drowned. See colonel's affidavit."

only evidence in the case, except that of claimant and official , is the affidavit, October 22, 1866, of William M. Gregg, late of the One hundred and seventy-ninth Regiment New York y Volunteers, who says—

> Dennis Dempsey, whom I well knew, was a private in Company G of that ; that the said regiment was ordered to Elmira, the place of organization, d off and discharged; that while in camp at Elmira, waiting to be paid off harged, the said Dennis Dempsey was granted a written permit, approved visit his family who did then, and still does, reside in the city of Elmira; nit was granted on or about the 11th day of June, 1865; that on the 19th day 1865, the dead body of said Dempsey was found in the Chemung River, which ough the city of Elmira; that a coroner's jury, summoned to inquire into the said Dempsey's death, found that he came to his death by falling into the g River on or about the 19th day of June, 1865, at the city of Elmira, and l there, casually and accidentally and by misfortune, was suffocated and in the waters of said river.

committee are of the opinion that it would not be proper for ss to interfere in this case against the ruling of the Pension Office, was strictly in accordance with the law and the facts, as shown evidence. Therefore your committee report adversely upon the of the petitioner, and ask to be discharged from the further eration of the bill (H. R. 5229) granting a pension to Catherine ey.

O

CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1686.

GEORGE W. WALKER.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

ASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2285.]

mmittee on Invalid Pensions, to whom was referred the petition of ge W. Walker and the bill (H. R. 2285) entitled a bill for the relief eorge W. Walker, having had the same under consideration, beg leave bmit the following report:

petitioner states in his memorial to Congress that he enlisted ary 17, 1863, in Company I, One hundred and twentieth Regiment ork Volunteers. That he was taken prisoner May 5, 1864, at the of the Wilderness, Virginia, and taken to Andersonville, Ga., and d December 11, 1864. That while a prisoner, from exposure, nd bad treatment, he contracted severe cold, which settled in his nd caused deafness, also contracted rheumatism, scurvy, dropsy, ronic diarrhea, and his constitution was generally broken down, his life was despaired of when he returned home, which resulted l deafness, rheumatism, and chronic debility of the stomach, which en his condition ever since his return home and still continues, he has been ever since his return home and still is incapacitated performance of manual labor. That he is in receipt of a pension per month for deafness of both ears, that being the maximum t allowed under existing law for total deafness. That at the time prior to his enlistment he was a clerk by occupation. That since urn home from said service he has been unable to obtain employ- s clerk by reason of his deafness, which wholly incapacitates him ich duties. That by reason of his rheumatism, chronic debility stomach, he is incapacitated for the performance of ordinary l labor. He therefore prays that he may be placed on the pen- ll at $24 per month, his disability being more than equivalent to s of a leg above the knee, or an arm above the elbow, he being citated for the performance of manual labor. He respectfully o the evidence on file in the Pension Office, including examining n's certificate, upon which pension certificate No. 129022 was January 5, 1875.

e is filed with the petition the affidavits of John P. Brown, M. l Stephen L. Heath, M. D., in support of his application, and confirm the petitioner's statement.

committee have also before them the papers from the Pension in the case, and it appears by an examination of them that the ner's statement as *to his* military service is correct. He was

originally pensioned at $8 per month, from May 14, 1874, on account of deafness, and afterwards increased to $13 per month, from October 21, 1874, which amount he now receives, for "deafness of both ears."

Your committee are of the opinion that this is not a case in which Congress should interfere to establish a precedent as asked for by the petitioner. He receives the maximum amount of pension allowed for the disability existing. If he has a claim for other injuries or disease contracted in the service, the Pension Office is the proper place for application to increase the pension.

Your committee therefore report adversely upon the prayer of the petitioner, and ask to be discharged from the further consideration of the bill (H. R. 2285) entitled "A bill for the relief of George W. Walker."

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1687.

HAMILTON BOUGHTON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

r. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3571.]

e Committee on Invalid Pensions, to whom was referred the bill (H. R. 3571) granting a pension to Hamilton Boughton, having had the same under consideration, respectfully submit the following report:

We find from an examination of the papers on file in the pension case ed at the Pension Office that the petitioner was a private of Company Ninety-third New York Volunteers, who enlisted December 7, 1861, d was discharged April 10, 1863. He filed an application for pension pril 15, 1863, and it was rejected January 16, 1878, fifteen years afterrds; the ground of rejection being "no disability in a pensionable gree from the causes alleged."

The petitioner alleges that while in the service, and in line of duty, in e peninsular campaign under General McClellan, he contracted disease the lung. In another declaration, June 8, 1870, he alleges that he ntracted fever in June, 1862, and in October, 1862, he contracted arrhea. His third declaration, filed July 23, 1877, alleges that in May 1862, he contracted chronic disease of the liver and chronic indigesn. The evidence shows that at and prior to his enlistment the soldier as a sound, hearty man, and free from any disease such as stated in his claration; also, that previous to his enlistment he had no family ysician.

The evidence as to the origin of the disease is from the captain of the titioner's company, who states that "the petitioner was taken sick at hite House, Va., about the last of May or the first of June, 1862, and mained in hospital until discharged." The captain thinks his disease as caused by exposure and the fare which he and the other soldiers had d, he not being previously a strong or robust man.

The testimony as to the continuous nature of the disease of the petiner is from two physicians, who state that they are now in attendance on the petitioner, who is laboring under chronic disease of the liver d chronic indigestion. They seem from their sworn statements to have en in attendance upon the petitioner but a few years. The petitioner akes affidavit October 23, 1877, that the two physicians who attended m from 1863 to 1871 are both dead, and that consequently he is unable file their testimony.

The Adjutant-General's report shows the soldier to have been present r duty up to August, 1862, when he was sent to hospital, and was disarged *on surgeon's certificate of* disability April 10, 1863. The records

of the Surgeon-General's Office show him to have been treated for general debility and consumption, his treatment extending from July 1, 1862, up to the time of his discharge.

The certificate of disability made by the surgeon who discharged him finds him—

> Incapable of performing the duties of a soldier because of consumption of hereditary origin and developed by exposure in the service. Has had profuse hœmoptysis since he has been in this hospital.

The petitioner was first examined by an examining surgeon of the Pension Office at Baltimore, April 13, 1863, who found him "two-thirds incapacitated from frequent attacks of hemorrhages." The examining surgeon further states: "I am satisfied that this condition has been brought on since entering the service. He has the shallows badly."

The next examination was made September 24, 1877, wherein the surgeon found him "one-half incapacitated from obtaining his subsistence." The next examination was made January 2, 1878. The examining surgeon states: "I am unable to find any disease of the lung, liver, or digestive organs, as alleged in his application." The next examination was made by the board of examining surgeons at Albany, June 5, 1878. The certificate then returned to the Pension Office is as follows: "Applicant complains of pain in back and side; a careful examination fails to show any disease of lungs or other organs, or disability arising from the cause stated."

We think this case was correctly disposed of by the Pension Office, and report adversely thereon.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1638

ANN SMART.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 131.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 131) granting a pension to Ann Smart, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case in the Pension Office, that the petitioner is the widow of John Smart, private Company C, Fifteenth Regiment New York Volunteer Engineers; re-enlisted February 27, 1864, and who died at Washington, D. C., April 15, 1864.

The petitioner filed declaration for pension March 22, 1865, which was rejected by the Pension Office April 29, 1866, upon the ground, "reported on rolls, 'died by intoxication.'"

The report of the Adjutant-General in the case shows "on the muster-out roll of Company C, of that regiment, dated June 13, 1865, he is reported private 'died April 16, 1864, at Washington, D. C., by intoxication.'"

Your committee find nothing in the case to warrant a reversal of the decision of the Pension Office. It seems to be entirely in accordance with the law and facts in the case. Your committee therefore report adversely upon the petitioner's prayer, and ask to be discharged from the further consideration of the bill (H. R. 131) granting a pension to Ann Smart.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1689.

ROBERT W. LIVINGSTON.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Robert W. Livingston, having had the same under consideration, respectfully submit the following report:

We find that the petitioner was captain of Company F, One hundred and eighteenth New York Volunteers; that at the battle of Drury's Bluff, May 16, 1864, he was wounded by a gunshot wound in the left shoulder, and on the same day received a gunshot wound of the right foot and leg; that he was pensioned for the same at the rate of $20 per month; that he had a resection of the left shoulder joint. Both the wound in his shoulder and the wound in his foot and leg were peculiar, and their treatment and progress in healing were attended with peculiar circumstances, and have been accompanied and followed by unusual and peculiar disability, which facts are proven by positive evidence presented to your committee. The disability, the petitioner claims, exists in as great a degree as though he had lost both his arms at the shoulder joint and his foot above the ankle.

In 1877 the petitioner applied for a pension under the act approved February 28, 1877, which application was rejected by the Commissioner of Pensions, on the ground that the petitioner had not lost one hand and one foot, and was not totally and permanently disabled thereby.

The petitioner is receiving a pension of $24 per month under the act of 1872. He now asks that his pension be increased under the act of February 28, 1877.

The petitioner's own affidavit shows that he is not totally disabled in either his wounded arm or foot, as he can use both. He does not make a case entitling him to a pension under the act of February 28, 1877, and it is under this law only that he asks for an increase of his pension.

We think the Commissioner of Pensions decided the case correctly, and that the pensioner is receiving all the pension he should receive under existing law. We therefore report adversely in this case.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1690.

LAND CLAIM IN NEW MEXICO.

JUNE 4, 1880.—Recommitted to the Committee on Private Land Claims and ordered to be printed.

Mr. GUNTER, from the Committee on Private Lands Claims, submitted the following

REPORT:

[To accompany bill H. R. 6403.]

The Committee on Private Land Claims, to whom was referred the bill (H. R. 6075) entitled "A bill to confirm a certain land claim in the Territory of New Mexico," report as follows:

First. It appears that the Kingdom of Spain, in the year 1806, by Lieut. Col. Joaquin Alencaster, at that time governor and captain-general of the province of New Mexico, granted to Francisco Salizar and thirty-eight others certain lands in the now Territory of New Mexico.

Second. That the original grant was, in all respects, regular and in conformity to law.

Third. That the grantees were put in juridical possession of the land thus granted March 1, 1808, and have remained in possession from that day until now, except for short periods of time, when driven away by hostile Indians.

Fourth. That the tract of land so granted has definite, well established natural boundaries on three sides, and on the fourth side is bounded by the Pedro Martin grant. And it has been decided by the Supreme Court that all grants with definite boundaries and with grantees in possession are good.

Fifth. Under the treaty of Guadalupe Hidalgo, under which New Mexico became a part of the domain of the United States, the rights of the grantees were not changed, and the United States solemnly agreed to protect the then citizens of New Mexico in all their rights.

Sixth. Under the act of July 22, 1854, the grantees in this case submitted their title to the surveyor-general of the Territory of New Mexico, and that officer reported that the grant in question, known as the Cañon de Chama grant, was valid, and should be confirmed. This report was made on the 17th of December, 1872. In May, 1878, a survey was made of the grant by the deputy surveyor-general of the Territory of New Mexico, and approved by the surveyor-general of that Territory September 7, 1878. To this survey the owners of the grant objected, claiming that it was not in accordance with the terms of the original grant, and failed to include within its boundaries about two hundred thousand acres rightfully belonging to them. The protest, however, has been withdrawn, and the owners of the grant are now willing to accept a confirmation in accordanee with the survey.

Seventh. Your committee referred H. R. 6075 to the Secretary of the

Interior for information and opinion, to which the following reply was made:

DEPARTMENT OF THE INTERIOR,
Washington, May 22, 1880.

SIR: House bill 6075, to confirm a certain land claim (Cañon de Chama) in the Territory of New Mexico, was received from your committee and referred to the Commissioner of the General Land Office.

I have the honor to transmit herewith copy of his report on the subject, under date of the 20th instant. He expresses the opinion that the claim should be confirmed, and in this opinion I concur.

Very respectfully,

C. SCHURZ, *Secretary.*

Hon. T. M. GUNTER,
Chairman Committee on Private Land Claims,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 20, 1880.

SIR: On the 15th instant, the honorable Assistant Secretary referred to this office "for information and opinion," H. R. 6075, entitled "A bill to confirm a certain land claim in the Territory of New Mexico."

This bill, which was referred to you by direction of the Committee on Private Land Claims of the House of Representatives, provides for the confirmation of the grant known as Cañon de Chama, in Rio Arriba County, New Mexico, and in connection with the matter I have the honor to report as follows:

Under the eighth section of the act of July 22, 1854 (Stats. 10, page 308), a petition was filed with the surveyor-general of New Mexico for the confirmation of the title to the Cañon de Chama tract, based upon a grant of the same said to have been made August 1, 1806, to Francisco Salazar and others by Joaquin Alencaster, then governor of the province of New Mexico.

March 1, 1808, juridical possession was given by Manuel Garcia de la Mora, chief alcalde of the town of La Canada, the boundaries being described therein, according to the translation, as follows: "On the north, the Ceballa Valley; on the south, the Capulin; on the east, the boundary of the Martinezes; and on the west, the Little White Hill (Legita Blanca)."

The testimony taken in this case shows that this grant has always been settled and occupied by the claimants except when driven off by the Indians.

The surveyor-general, in his report of December 17, 1872, states that "the Spanish papers are certified copies of the originals made in 1832 by Pedro Ignacio Gallego at request of José Pablo Salazar, the originals having been very much handled (manido), and their correctness is certified by Antonio Abad Duran, corporation secretary of Abiquiu, on the 4th April, 1832." He concludes by approving the grant and recommending its confirmation by Congress.

A transcript of this report and of the accompanying title papers and testimony were transmitted by the honorable Secretary of the Interior to the President of the Senate February 14, 1873, and are printed in Ex. Doc. No. 45, Senate, Forty-second Congress, third session.

The surveyor-general of the Territory of New Mexico, whose duty it is, under the law, to examine and pass upon the validity of all private land claims in said Territory, presented to him for adjudication, having reported in favor of the grant in question, I know of no objection to its confirmation by Congress.

It is proposed by the bill H. R. 6075 to confirm the grant according to a survey approved by Surveyor-General Atkinson September 7, 1878. This survey is on file in this office, and appears to conform substantially to the boundary named in the juridical possession. It contains an area of 472,736.95 acres, being an average of about 12,275 acres to each claimant.

I inclose a draught of a bill prepared in this office, which I would suggest as a substitute for the bill in question.

The bill is herewith transmitted, also a tracing of the survey referred to.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

In accordance with the recommendations of the Secretary of the Interior, your committee unanimously report the bill, amended as recommended by him, for passage.

O

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1691.

JAMES CLARK SMITH.

4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

DAVIDSON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6405.]

Committee on Claims, to whom was referred the bill (H. R. 606) for the elief of James Clark Smith, have considered the same, and report:

ames Clark Smith is a merchant of Dundee, Scotland, and has been for many years. He is shown to be a man of credit, and of good ding among the merchants of Dundee. Mr. Smith was largely en- ed in shipping Scotch goods to his agents in New York. It appears : in December, 1867, he purchased from Thomas Bell, a manufactu- of Dundee, three bales jute-cloth, and shipped the same per steamer opa, December 31, 1867, consigned to A. M. Chance & Co., New k, then Mr. Smith's agents.

pon arrival of the jute at the port of New York, A. M. Chance & paid duties and charges to the collector of customs, and had the h conveyed to the custom-house. The goods were seized by the col- or of customs, port of New York, March 7, 1868, on the ground that same were undervalued in the invoice, and a board of appraisers, sisting of Messrs. Harvey Spencer, George Burgess, and Robert mon, all merchants of New York, were appointed to appraise the ls.

his board added one penny per yard to the invoice price of the goods, under the customs regulations the jute was condemned, sold, and eeds paid into the Treasury.

r. Smith now claims that the whole proceedings of condemnation e erroneous, and in support of this claim he presents to your com- ee certificates and affidavits of Harvey Spencer, George Burgess, Robert Slimmon, the appraisers on whose report the jute was con- ned, in which each of these gentlemen states he is convinced that said goods were invoiced at their true value, and that the error in ing one penny per yard arose from the fact that the jute was of aper quality than any previously known to him. Each appraiser its that the appraisement upon which the jute-cloth was condemned erroneous, and that the invoice price was the correct value of the ls. Mr. Smith also has filed a large mass of testimony tending to v that the value of the jute as stated in the invoice was the true ue of the goods.

July, 1868, claim for refunding value of the goods was filed in the asury Department, the case was considered, and no relief granted.

following *is an extract from* a letter from the Secretary of the

Treasury to the Secretary of State, dated March 20, 1869. After stating the facts of condemnation, the Secretary adds:

> The applicant now produces new testimony to show that the appraisers at last admit that they were mistaken in their appraisement. The department cannot consider this testimony with a view to any relief, both for the reason above given, and because the proceeds of the cloth have been covered into the Treasury and distributed according to law. The only proper remedy for the petitioner is by an application to Congress.

Your committee are of the opinion that the seizure, condemnation, and sale of this jute-cloth were erroneous, and that James Clark Smith, the petitioner, should be indemnified by the United States for his losses consequent upon such erroneous action of the custom-house officers at New York.

The original invoice, which is in evidence, shows that the jute cost the petitioner, in Dundee, £55 3*s.* 6*d.*, which is equivalent to $268.51 gold coin of the United States. The original statement of account rendered by the New York factors of petitioner shows that the costs, duties, and charges paid by them on the jute amounted to $201.48.

It is also shown that on the 6th day of August, 1868, James Clark Smith made an additional shipment of five bales jute to A. M. Chance & Co., on which second shipment duty was exacted by the custom-house officers at the rate assessed by the board of appraisers, and which rate of duty exceeded the true and proper duty in the sum of $59.74, as it is now shown that the rate assessed by the board of appraisers was erroneous; and as the exaction of this $59.74 depended on such error, your committee think that this sum should be refunded.

The sum due in this case from the United States may be stated as follows:

Cost of goods	$268 51
Duties, charges, and costs paid by petitioner	261 22
Total	529 73

And for this sum your committee report a bill in the nature of a substitute for the bill H. R. 606, and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1692.

PETER TARGARONA.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DAVIDSON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6406.]

The Committee on Claims, to whom was referred the bill for the relief of Peter Targarona, having considered the same, respectfully submit the following report:

The bill proposes to pay to the claimant the sum of $103,740 for two steamboats, the Live Oak and the Capital, taken by officers of the United States Government after the close of the war in 1865.

The claimant is a naturalized citizen, of Spanish birth, and in July, 1865, was the owner of a steamboat called the Capital, then at New Orleans. His steamboat was, on the 6th day of July, 1865, seized by the United States marshal for the eastern district of Louisiana, by virtue of process based upon a libel under the confiscation act of 1861. The claimant, Targarona, appeared, filed his claim and a petition to have the said steamboat released to him upon his giving bond and security as required by law. The boat was appraised by United States appraisers at $8,000 cash; the claimant gave bond, and it was released and delivered to him.

In the mean time the action was prosecuted in the district court for the eastern district of Louisiana, the claimant denying the alleged facts upon which the boat was seized, and offering evidence to sustain his claim. While this cause was pending, and after the steamboat had been released and restored to the possession of claimant, and while it was under his control and in his service, to wit, in December, 1865, it was accidentally snagged and sunk between New Orleans and Shreveport, and was lost. There is much testimony as to the value of this boat, but as the committee are of the opinion that the Government of the United States is in no way liable for the loss of this boat, this testimony is deemed immaterial. But it appears from the proceedings had that the boat was condemned by the court and declared forfeited, and as it had been bonded by the claimant at its appraised value of $8,000, judgment was rendered in favor of the United States against the claimant and the sureties on his bond for that sum.

This judgment was rendered January 10, 1866. From this judgment the claimant appealed to the Supreme Court of the United States, and filed a bond in the sum of $12,000, as required on suspension appeal. The appeal was perfected on the 31st day of January, 1866, but, notwithstanding this appeal, execution was issued by order of the district attorney.

Under this execution *and by virtue* of it the United States marshal

seized a steamer called the Live Oak, the property of the claimant, Targarona, and on the 22d day of May, 1866, said steamer was sold by the marshal under said execution for the sum of $8,300. This boat was appraised by United States appraisers at $18,000. The seizure and sale of this steamer pending the appeal was illegal, and the injustice and wrong is made manifest by the decision of the Supreme Court rendered on the appeal. By the judgment of the Supreme Court, rendered at the December term, 1868, the decree of the circuit court in Louisiana was reversed, and it was ordered that the cause be "remanded to the circuit court of the United States for the district of Louisiana, with directions to dismiss the libel of information."

It was accordingly remanded with directions that "such execution and proceedings be had in said cause, in conformity to the decree of this (the Supreme) Court, as according to right and justice, and the laws of the United States, ought to be had," &c. But the claimant's property had been seized and sold and the wrong had been consummated. The whole proceeding, after the suspension appeal had been perfected by bond, was void.

We are of opinion that the claimant is entitled to relief at the hands of the United States for the injury sustained by the seizure and sale of the Live Oak, but as this committee cannot well determine the amount thereof, we think claimant should be referred to the Court of Claims; as much testimony has been taken in the cause, we think it should be considered by that court.

We therefore report back a substitute for the original bill, referring the claim to the Court of Claims, with jurisdiction to hear and determine the same, so far as it relates to loss or damage sustained by the seizure and sale of the Live Oak, with a recommendation that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1693

EDWIN DE LEON.

JUNE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DAVIDSON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1368.]

The Committee on Claims, to whom was referred the bill (H. R. 1368) for the relief of Edwin De Leon, have had the same under consideration, and respectfully submit the following report:

The bill proposes to pay Edwin De Leon, late consul-general of the United States in Egypt, the sum of $479.11, balance due him on adjustment of his official accounts by the First Comptroller of the Treasury of the United States. The claimant was appointed consul-general for Egypt and its dependencies in March, 1853, and continued to act as such till February 28, 1861. It appears from the report of the First Comptroller of the Treasury that "the final balance due to him to that date was $479.11," and this balance has never been paid, but "was covered into the surplus fund." This balance, as appears by a statement of the First Comptroller, stands to Mr. De Leon's credit now, and "payment cannot be made without special legislation, for the reason given."

Believing that the amount claimed by Mr. De Leon ought to be paid, the committee recommend the passage of the bill.

O

5TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1694

J. S. GOLLADAY AND J. W. BOWLING.

NE 4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. DAVIDSON, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6407.]

he Committee on Claims, to whom was referred the bill for the relief of J. S. Golladay and J. W. Bowling, having duly considered the same and the accompanying papers, respectfully submit the following report:

The petitioners, J. S. Golladay and J. W. Bowling, partners, under e firm-name of Golladay & Bowling, were distillers and manufacturers whisky in Logan County, Kentucky, and in the month of February, the year 1864, having a large stock on hand, they wished to ship a ortion of it to Clarksville, Tenn., for storage only, as it was not con-dered safe to keep it in Logan County on account of the guerrillas and arauding bands who at that time were committing depredations in hat part of Kentucky. Before making the shipment, J. S. Golladay, ne of the partners, obtained from Colonel Hester, commanding the nited States forces at Russellville, in Logan County, a letter of intro-uction and recommendation to Colonel Smith, commanding the United tates forces at Clarksville, of which the following is a copy:

HEADQUARTERS UNITED STATES FORCES,
Russellville, Ky., February 4, 1864.

SIR: I take pleasure in recommending J. S. Golladay and J. W. Bowling to your or and acquaintance. These gentlemen desire to have your permit to ship a lot of isky from Logan County, Kentucky, to Clarksville, Tenn.

I take pleasure in vouching for their veracity, and recommend them to your entire nfidence.

Very respectfully,

W. W. HESTER,
Lieutenant-Colonel Forty-eighth Kentucky Volunteers, Commanding Post.

COMMANDING OFFICER UNITED STATES FORCES,
Clarksville, Tenn.

With this letter Mr. Golladay, one of the petitioners, went to Clarks-lle and applied to Colonel Smith for a permit to ship their whisky for orage at that place. Colonel Smith referred him to General L. H. ousseau, commanding the District of Tennessee, and also suggested hat he should see Mr. O. M. Blackman, local special agent of the reasury at Clarksville, in relation to the matter. The latter made some xplanation of the difficulties attending the shipment, and referred him Charles A. Fuller, assistant special agent of the Treasury Depart-ent at Nashville, whose authority was superior to that of the local pecial agent. The said Golladay then went to Nashville and called on eneral Rousseau, *who advised him* to see Mr. Fuller, the assistant spe-

cial agent for Tennessee. He accordingly applied to Mr. Fuller for a permit, and was informed by him that this could only be obtained through the military authority; and the said Fuller made the following indorsement on the letter of Colonel Hester to Colonel Smith:

Whisky is a contraband article, and as such I do not pretend to exercise any control over it, leaving it to the direction of the military authorities.

CHAS. A. FULLER,
Ass't Sp'l Ag't.

With this the said Golladay then went to General Rousseau, whose district included both Nashville and Clarksville, and obtained from him an order to Colonel Smith, commanding at Clarksville, of which the following is a copy:

HEADQUARTERS DISTRICT NASHVILLE,
Nashville, February 15, 1864.

Respectfully referred to Colonel Smith, commanding at Clarksville, who is authorized to grant the permission if he thinks it proper.
By command of Major General Rousseau.

B. H. POLK,
Capt. & A. A. G.

This order was indorsed on the same letter, below the indorsement of the said Fuller.

He also obtained from General Rousseau a separate order or letter to Colonel Smith, of which the following is a copy:

HEADQUARTERS DISTRICT OF NASHVILLE,
Nashville, Tenn., February 16, 1864.

COLONEL: This morning a paper was referred to you relating to Mr. J. S. Golladay, who desires to ship some whisky to Clarksville from Logan County, Kentucky. The major-general commanding directs me to say that whatever action you deem proper in the premises will be satisfactory to him.

I am, colonel, very respectfully, your obedient servant,

B. H. POLK,
Capt. & A. A. G.

Col. A. A. SMITH,
Commanding at Clarksville.

With these orders, the said Golladay then returned to Clarksville and made application to Colonel Smith for permission to ship for storage there one hundred barrels of whisky. This Colonel Smith refused to do, but gave him a permit to ship fifty barrels, which was indorsed on General Rousseau's letter, and of which the following is a copy:

HEADQUARTERS UNITED STATES FORCES,
Clarksville, February 20, 1864 -

Mr. J. S. Golladay has permission to ship to this post for storage (50) fifty barrels whisky.

A. A. SMITH,
Colonel Eighty-third Illinois, Commanding Post.

Mr. Blackman, the local special agent at Clarksville, states in his affidavit that the said Golladay afterward made application to him for his indorsement of the paper signed by General Rousseau and approved by Colonel Smith, as the same was subject to trade regulations. The order and permit show no such qualification upon their face, and there is nothing in the testimony of Colonel Smith or General Rousseau to indicate that any such qualification was intended, and Mr. Golladay, who is represented by all the witnesses who speak of him as a gentleman of character and honor, states in his affidavit that on his return from Nashville, and after getting the permit from Colonel Smith, he told Blackman of it, and perhaps showed it to him, and, believing that he

had fully complied with the regulations of the law and had all necessary authority for the shipment of the fifty barrels of whisky, doubtless told him that he would ship it. He thinks that Blackman may have stated many or all of the matters and things contained in his affidavit to Colonel Smith, in a conversation had with him out of the presence of the said Golladay. But it was after this conversation with Blackman that Colonel Smith gave him the permit.

Having thus consulted in good faith Mr. Fuller, the highest civil revenue authority in Tennessee, and having been by him referred to General Rousseau as having exclusive control over the matter, he applied to him, and obtained, through him, the permit which he desired, and which, he had good reason to believe, would fully protect him from risk or loss in the shipment of his whisky. He then returned to Kentucky and shipped fifty barrels to Clarksville for storage only. Upon this whisky the revenue tax of 75 cents per gallon had been paid, amounting to $1,500. Shortly after it reached Clarksville the said Golladay, hearing that an attempt would be made to seize and confiscate it, wrote to Mr. Mart, the local Treasury agent at Russellville, to tender payment of the special tax of 5 per cent., required by the Treasury regulations under the act of July 13, 1861, and his letter was handed by said Mart to Mr. Van Pelt, a Treasury agent under the surveyor of customs at Louisville, who happened to be in Russellville at the time. The said Van Pelt went immediately to Clarksville and seized the whisky, had it carried to Louisville and condemned, under the 5th section of the act of July 13, 1861, and the regulations of Treasury Department. The petitioners, feeling aggrieved by this action of the Treasury agents, and the condemnation of their property, made application to Mr. McCulloch, at that time Secretary of the Treasury, for the remission of the forfeiture and general relief, but this application was refused upon the ground that the regulations of the Treasury Department had been violated, and that these regulations had been pointed out and explained to the petitioners by Blackman, the local Treasury agent at Clarksville, previous to their obtaining the permit from Colonel Smith; and that afterward, but before the shipment was made, they were warned of the invalidity of the license, and that the goods, if shipped, would be liable to seizure, and yet persisted in their course, declaring that they would risk the consequences; and that these facts negatived the allegations of the petitioners, that they were guilty of no neglect or intention of fraud, or to violate the regulations of the department.

Subsequently, on the 1st day of August, 1866, an application was made by the petitioners, supported by a statement of facts signed by General L. H. Rousseau and other papers, for a reconsideration of the Secretary's decision in this case, and in a letter of the date of December 7, 1867, addressed by him to J. S. Golladay, he states:

> Upon examination of the records of the department it was ascertained that the proceeds of the property condemned as above had been distributed by final decree or order of the court between the officers of the revenue and the United States, and that the share thus accruing to the government had been covered into the Treasury. By letter of the Assistant Secretary of October 30, 1866, Mr. Pennebaker was apprised of the facts above stated, and informed that the proceeds of the property having been distributed, the Secretary of the Treasury had no power to reconsider his decision or to restore any part of the same to the petitioners. In view of the fact that moneys covered into the Treasury cannot be withdrawn except by warrant and in consequence of appropriations made by law, it would appear that the proceeds in question can be restored to the claimants only by the action of Congress.

The facts of the case, in the opinion of the committee, do not indicate any intention or desire on the part of the petitioners, or of either of them,

to defraud the revenue or violate the regulations of the Treasury Department. Wishing to remove their whisky to a place of safety for storage only, they made most diligent inquiry of the military and civil authorities as to the proper mode of accomplishing their purpose, and after having paid the tax of seventy-five cents per gallon on their whisky, they proceeded in conformity with the license obtained, by the co-operation of the highest civil and military officers of the government in the State of Tennessee, who had any control over the matter. And when from threats of confiscation they deemed it advisable to make sale of their whisky, they were making efforts to pay even the 5 per cent. tax mentioned in the regulations, when it was seized and carried off to Louisville. The regulations referred to were complicated and numerous, and, if accessible to others, their proper interpretation and construction was most likely to be obtained from the officers to whom application was made. General Rousseau in his testimony says, "I am satisfied that Golladay acted in good faith in taking the whisky there, believing he had all the necessary authority. I believed he only needed my permit, as whisky was a contraband article, and I believe I so told him, though I can't say positively." Subsequently General Rousseau made a sworn statement, which is as follows:

WASHINGTON, *August* 7, 1866.

In the matter of Mr. Golladay, I think justice and right demand that I should state some additional facts in this case. The condition of things existing in Southern Kentucky and Tennessee, at the date of the seizure of the 50 barrels of whisky, ought to be known and appreciated in order to pass correctly upon the matter.

At that time there was much confusion in that part of the country incident to the war, and the title to all movable property was very precarious and depended almost entirely upon the action of the military, to whom the people appealed on all occasions.

The Treasury regulations were very little understood by anybody, and were construed according to convenience in many cases.

The military and Treasury agents often differed, and the agents differed with each other as to what the rules were. In this state of things Golladay came to me as military commander of the district of Tennessee, and asked me what steps to take to obtain authority for the shipment of his whisky to Clarksville. Not wanting the whisky in my district, I declined permission to let him ship it, and he went away.

The country was full of guerrillas, and he afterward returned, telling me again what he had first assured me, that they would seize his whisky and use it unless he got permission to ship it to Clarksville, as he did not know on what day the United States troops might leave Russellville, Ky. I finally told him I would give him the military permit, and for the rest referred him to Mr. Fuller, the "local supervising special agent" at Nashville, Tenn., telling him whisky was a *contraband* article, though, as it was controlled by the military. I gave the permit, and he went to Mr. Fuller, who indorsed the same as it appears in the case. Golladay was assured, and, as it seemed believed, he had the highest authority, and all he needed; I thought so, as did also Mr. Fuller.

Believing that Fuller and myself had full power and control over the matter, rather, as Mr. Fuller states, that the military controlled it, as the article was contraband, I so assured Golladay, and he certainly acted upon that assurance. He seemed anxious to know and comply with every requirement of the authorities, and up the time of the seizure of his whisky there were numerous instances of such shipments. In fact, it was the uniform practice.

I had consulted with Mr. Fuller soon after his appointment, telling him that wanted the military under me to have nothing to do with Treasury regulations except in aid of the Treasury agents, and it was then agreed that he should notify me when necessary. But it was understood between us that military permits were sufficient authority for the shipment of whisky into the district, and we acted upon that understanding. I referred Golladay to Mr. Fuller because he told me that doubts had been expressed in Kentucky as to whether the military authority was sufficient to authorize the shipment of the whisky, as I always referred such matters to Mr. Fuller when any doubt arose. I haven't a doubt that Golladay believed he was acting properly and lawfully in the shipment of the whisky, for I believed he was myself. If he committed an error he did so by my advice.

[L. S.] LOVELL H. ROUSSEAU.

Sworn and subscribed before me this 23d day of August, A. D. 1866.

N. CALLAN, *Notary Public.*

[5-cent stamp.]

On the 27th July, 1865, Mr. Blackman, the local Treasury agent at Clarksville, wrote a letter to the Secretary of the Treasury, of which the following is a copy:

CLARKSVILLE, TENN., *July* 27, 1865.

DEAR SIR: Mr. J. S. Golladay, of Logan County, Kentucky, had 50 barrels of whisky seized and confiscated some two years ago in this place for non-compliance with the Treasury regulations. I am and have been for years well acquainted with Mr. Golladay, and was at the time local Treasury agent at this place, and gave my deposition in the case, and being called on by Mr. Golladay with the statement that he intended applying to you for a release of forfeiture and asked for a statement to you, I take pleasure in saying that I do not believe Mr. Golladay could willfully defraud the government or intended to do so in this case, and his violation of the Treasury law was not for a want of respect for it, but from a misconception caused by a difference between the military and civil departments in their difference of views as to what gave him the right to ship to Tennessee; and I know that he applied in good faith to both the civil and military authorities here and at Nashville, and that he asked for and procured of Colonel Smith, commanding post here, authority to store only, disclaiming, as Colonel Smith says in a statement he made in writing to Mr. Golladay, any intention of selling until the law was complied with, and so far as I can learn he never offered any of said whisky for sale here at all; and I take pleasure in recommending his case as a suitable one for the remission of forfeiture, and a restoration of proceeds of sale of whisky as an act of simple justice from a government that desires to oppress no one, especially for an honest misconception of the letter of the law.

Very respectfully,

O. M. BLACKMAN.

Hon. H. MCCULLOCH.

After due consideration of the foregoing facts, the committee are unable to discover any evidences of fraud, or fraudulent intent, or desire to violate the law or regulations of the Treasury Department, on the part of the petitioners or either of them. On the contrary, they seem to have acted in entire good faith, and to have sought information as to their mode of procedure from the highest sources within convenient reach; and if, after all, they made a technical mistake, this mistake was rather the result of the official advice which they had received than of intentional fraud or error. If the proceeds of sale had not been distributed and covered into the Treasury at the date of the application to the Secretary for a reconsideration of his first decision, it is probable that, with the additional statements of General Rousseau and Mr. Blackman before him, he would have felt bound to reverse that decision, and the petitioners would have obtained relief.

The committee estimate the quantity of whisky seized and condemned, from the amount of tax paid upon it, to be 2,000 gallons, and the value of it to be $7,000, and for this amount they think the claim of the petitioners is fair and just, and therefore recommend the passage of the substitute for the original bill which is herewith reported.

[CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
d Session. } { No. 1695.

CHARLES EDWARDS.

4, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

WHITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 265.]

Committee on Military Affairs, to whom was referred the bill (H. R. 5) for the relief of Charles Edwards, have had the same under consideran, and submit the following report:

arles Edwards, late second lieutenant of Company C, Eighteenth ment Pennsylvania Volunteer Cavalry, was enrolled as a sergeant of company on the 25th day of February, 1864, to serve three months uring the war. On the 1st day of April, 1864, he was commissioned d lieutenant of said company by the governor of Pennsylvania, rew G. Curtin, and was, though not yet mustered, assigned to duty ie commandant of said regiment, Lieut. Col. S. P. Bunton, on the lay of June, 1864, in pursuance of which order Lieutenant Edwards ed upon duty of second lieutenant, the senior officers of his com- being absent as prisoners of war. He served therein continuously, cipating in all the marches, battles, fatigues, and hardships which egiment endured during the memorable operations of the years and 1865, most of the time commanding his company until after elease of the officers aforesaid and the return of his captain, Fred. acher, to duty. Soon after this officer's return to the company, he strenuous efforts to have the petitioner, Charles Edwards, mustered is second lieutenant; but in the absence of Second Lieut. James Veaver, whom he was to succeed, who it appears had absented him- rom "Parole Camp" without authority, his muster was necessarily ed until near the close of the month of September, 1865, when he luly mustered and pay allowed from May 16, 1865. The evidence e case very clearly establishes the fact that the absence of Second t. James A. Weaver from the company (whose commission to the lieutenancy of Company C, Eighteenth, Regiment Pennsylvania nteer Cavalry, bore the same date as that of the petitioner's) pre- ed the petitioner, Charles Edwards, from being mustered, and ugh he, the said Charles Edwards, commanded said company afore- assumed all the responsibilities for ordnance, commissary, and termaster's stores, made reports to the proper accounting officers, recognized and acknowledged his returns as official papers, on nt of not having been mustered, he failed to receive the pay as officer from the 5th day of June, 1864, the date of his assignment

to duty on his commission, until the 16th day of May, 1865, the date of his muster. It is further shown in evidence that during this period, from June 5, 1864, to May 16, 1865, the petitioner had to mess different, employ a servant, and buy his own clothing.

Now, in view of the facts exhibited by the papers filed in support of this claim for relief, we are of the opinion that justice and equity demand that relief be granted the petitioner, and accordingly report a bill for that purpose and earnestly recommend its passage. It further appears there was a vacancy in the first lieutenancy of Company C, to which Lieutenant Weaver was commissioned and was subsequently mustered. If First Lieutenant Weaver had been mustered at the proper time there would have been a vacancy in the second lieutenancy, and the muster would have been regular. It is submitted the bill should be amended by striking out the "8th of April" in the seventh line and inserting "June 5."

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1696.

PUBLIC BUILDING AT FORT WAYNE, IND.

JUNE 4, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ATHERTON, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

[To accompany bill H. R. 6408.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 6024) for the erection of a public building for a court-house, post-office, &c., at Fort Wayne, Ind., having considered the same, now report:

That an act has been recently passed by Congress providing for the holding of terms of the circuit and district courts of the United States at Fort Wayne, Ind.; and the building of a court-house at that point has become very desirable, if not an imperative necessity.

The post-office at Fort Wayne is kept in a dingy building, furnishing neither a safe depository of government property nor commodious accommodations for the people.

The government owns no building there, and the office of collector of internal revenue is also kept in a rented building.

The postal business at Fort Wayne is tabulated as follows:

Money-order department.

RECEIPTS.

Balance from June 30, 1878	$1,770 51
7,472 domestic orders issued	86,020 55
Fees on domestic orders issued	865 50
17 Canadian orders issued	187 90
Fees on Canadian orders issued	5 20
41 British orders issued	459 97
Fees on British orders issued	14 95
110 German orders issued	1,332 20
Fees on German orders issued	38 05
8 Swiss orders issued	96 50
Fees on Swiss orders issued	3 25
2,499 certificates of deposit issued for money-order funds from postmasters	204,677 00
Total receipts	295,471 58

DISBURSEMENTS.

8,997 domestic orders paid	$121,387 41
5 Canadian orders paid	103 19
12 British orders paid	335 34
87 German orders paid	2,372 44
8 Swiss orders paid	269 98

86 orders repaid	$1,38[illegible] 36
Remitted to postmaster, Philadelphia	168,30[illegible] 00
Contingent expense account	[illegible] 77
Cash on hand	1,29[illegible] 09
	295,47[illegible] 58

General postal account.

RECEIPTS.

Sale of stamps, envelopes, &c.	$26,507 32
Box rent	442 75
Waste paper	12 76
Unpaid postage	188 61
	27,151 44

DISBURSEMENTS.

Total expense of the office	$8,724 09
Total expense of carrier system	5,145 98
	13,870 07
Net profit to the department	13,281 37

Carriers' department.

CARRIERS' STATEMENT.

Carriers employed	7
Delivery trips daily	17
Collection trips daily	17
Registered letters delivered	3,547
Mail letters delivered	831,190
Mail postal-cards delivered	92,968
Local letters delivered	83,144
Local postal-cards delivered	85,435
Newspapers, &c., delivered	680,945
Letters returned to the office	514
Letters collected	664,871
Postal-cards collected	106,097
Newspapers, &c., collected	90,950
Total number of pieces handled	2,639,654
Total postage on *local* matter delivered through the boxes, general delivery, or by carriers	$3,826 83
Amount paid carriers Incidental expenses	5,145 98

Registry department.

Letters registered in Fort Wayne	955
Letters registered received for Fort Wayne	7,672
Registered packages, in transit	7,198

Miscellaneous items.

Letters advertised	2,037
Average per week	39
Largest list, per week	72
Smallest list, per week	6
Sent to dead-letter office	1,935
Sent to dead-letter office, stamped and no address	58
Sent to dead-letter office, held for postage	491
Sent to dead-letter office, refused	5

The following statement shows also the business of the office for nine months ending March 31, 1880:

For the quarter ending September 30, 1879	$6,642 95
For the quarter ending December 31, 1879	7,921 35
For the quarter ending March 31, 1880	8,327 67
Number of money-orders paid 7,292, amount	101,569 91

Number of money-orders issued 6,167, amount	$66,343 98
Amount deposited at that office	164,394 00
Amount remitted to postmaster at Philadelphia	127,900 00

The rent now paid for the post-office at Fort Wayne is $1,000 per annum.

A very full statement of the location, population, growth, wealth, business activity, and prospects of Fort Wayne is submitted by the memorialists who petition for the erection of this building, to which the attention of the committee is called.

From this statement it, among other things, appears that Fort Wayne is an important railroad center, having about 33,000 inhabitants, situate in Northeastern Indiana, and is the business center of a large and prosperous section of the country, rich in agricultural wealth; that many manufactories are located there, as well as the railroad shops of two large railroad corporations, giving employment to a large number of men; that a very extensive wholesale and retail trade in merchandise is carried on there, which is increasing yearly, running the figures largely into the millions; and the city abounds with the indicia of thrift, activity, enterprise, wealth, and commercial prosperity.

In view of the need of a building for a court-house, as well as for a post-office and internal-revenue office, the committee recommend the passage of said bill, by the substitute submitted, limiting the total amount to be expended to one hundred thousand dollars.

'H CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1697.

W. L. RILEY.

JUNE 4, 1880.—Laid on the table and ordered to be printed.

COOK, from the Committee on Public Buildings and Grounds, submitted the following

REPORT:

Committee on Public Buildings and Grounds, to whom was referred he petition of William L. Riley, praying an appropriation for payment f a claim for depositing certain earth on the Smithsonian and other pubic grounds, having had the same under consideration, respectfully report:

'hat, through a subcommittee appointed for the purpose, the claimant l his witnesses and witnesses for the government were summoned ore the committee and examined under oath touching the account sented. Through this examination the following facts were develd, namely:

'hat in October, 1873, Mr. Riley obtained permission to deposit an known quantity of earth upon the public grounds attached to the ithsonian Institution. No contract or agreement, direct or implied, s ever made by any officer or agent of the government with Mr. Riley, lertaking or promising to pay for the work he claims to have done; he had the same permission granted him to deposit the earth that er citizens had, and no more claim upon the government than a hund others might have, who, for their own convenience, deposited earth avated in other places on the public grounds.

'he permission given petitioner by a clerk in Colonel Babcock's office s coupled with a statement that "there was no money to pay for the th," but that petitioner might deposit the earth, and "perhaps he ght get Congress to pay him for it."

Mr. Riley hauled some earth in October, 1873, and "dumped" it upon Smithsonian grounds, but the officer in charge took no note of the ntity. Fifteen months afterward Mr. Riley made out an account for 023 cubic yards of earth at 25 cents per yard, $255.75," and presented o Col. O. E. Babcock, then Superintendent of Public Buildings and ounds. On the 20th of January, 1875, Colonel Babcock indorsed this ount as follows:

> r. Riley received permission to deposit earth in the Smithsonian grounds in Octo- 1873, with the full understanding that there was no appropriation from which ment could be made for said earth. No account was kept by this office of the num- of yards deposited, though it is known that a considerable quantity was deposited Mr. Riley. I have no reason to suppose that his statement of the amount is not ect.
>
> (Signed) O. E. BABCOCK, *Col., &c.*

ubsequently, some time in 1877, another item of account was added he first-mentioned item, and upon the same paper containing Colonel

Babcock's indorsement, to wit, "for 1,849 yards of earth deposited in the White Lot, at 25 cents per yard, $462.25." This was added by some one, by authority and direction of Mr. Riley, in a different handwriting from the first, and was dated in 1876.

This account, with the genuine indorsement of Colonel Babcock, was not presented to the department or to your committee, but was produced by petitioner during the examination. The "account" referred to the committee with the petition was the same as to the items and amounts, but contains what purported to be a copy of an indorsement by Colonel Babcock, in these words:

> The lack of appropriation deferred the payment of the above, the work being very necessary.
>
> O. E. BABCOCK,
> *Colonel of Engineers.*

This indorsement is declared by Colonel Babcock to be a forgery, and that he never wrote or signed any such indorsement, nor authorized any one to write or sign the same.

The testimony further shows that the price charged in the account, to wit, 25 cents per cubic yard, is about twice as much as was usually paid to parties who were employed or contracted with to do such work. It is also shown by the testimony that a great many parties have from time to time "dumped" or deposited earth on the public grounds without compensation, or without claiming pay therefor.

Mr. Riley was a contractor, and private individuals paid him a certain sum, admitted to have been a fair price for his work, for removing the earth from their premises in the city; though he claims that but for the thought that he might get Congress to pay him for putting the earth on the public grounds he might have had a shorter distance to haul it.

The character of this claim, and the questionable manner in which it was prepared and presented, and the lapse of time after the work before it was urged, force the conclusion that it ought not to be paid.

Your committee therefore recommend that the petition and accompanying papers lie on the table, that the evidence be filed, and this report printed.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1698.

MARITIME LIENS.

JUNE 5, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. LAPHAM, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6415.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5415) in relation to maritime liens and remedies, having had the same under consideration, respectfully report:

By the Constitution of the United States the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction. This has been uniformily held to embrace the whole jurisdiction as exercised when the Constitution was adopted, and to be more extensive than the jurisdiction of the high courts of admiralty in England. Generally it has been held to extend to claims by ship-carpenters and material-men for repairs and necessaries furnished to vessels, except in the home port of the vessel, in which cases the rights and remedies have been mainly those, if any, which are provided for by State legislation. In the case of material-men our jurisdiction and practice differ essentially from that of the English court of admiralty, and their rights and remedies differ according to the varying legislation of the States as to the liens and remedies against vessels, their cargoes, and owners and masters for repairs, supplies, and necessaries furnished to a vessel in its home port. The whole tendency of State legislation and the constant effort, from time to time, of courts of admiralty in the United States has been in the direction of abolishing or overlooking the distinction between the liens and remedies against vessels in foreign and vessels in their home ports. It has been repeatedly held and claimed that such distinction is wholly unfounded in reason and principle, and recently the subject has become one of extended interest and discussion by reason of a late decision of the Supreme Court of the United States in the case of the Lottawana, reported in 21 Wallace Reports, page 558. Those interested in such questions in the cities of Illinois and Wisconsin advocating that preference should be given to such liens upon vessels in their home ports, and that such liens should have priority over mortgages, as in the case of foreign vessels, have stated their views in substance as follows:

They claim the liens and remedies should be upheld.

1. Because supplies and repairs are necessaries and mortgages are not.

2. Because they are marine claims, and mortgages are not. (The Lottawana, 21 Wall., 558.)

3. Because, by *the general maritime* law, those who furnish necessary

materials, repairs, and supplies to a vessel have a lien therefor, as well when furnished in her home port as when furnished in a foreign port, and courts of admiralty are bound to give effect to the lien. (The Lottawana, 21 Wall., 558.)

4. Because equal rights and privileges should be conferred upon those rendering equal services to a vessel, irrespective of where or by whom they are furnished. The benefit derived by the ship, as an instrument of commerce, should be the important consideration in determining the merits of the claim.

5. Because a vessel mortgage is not maritime in its essence or nature, is merely a statutory lien, while contracts for furnishing materials, supplies, and repairs, in the home port of a vessel, are maritime claims, and when a lien is given therefor by State statutes courts of admiralty will enforce them by original process.

6. Because a libel cannot be maintained upon a mortgage, it not being a maritime claim, having no standing in court, except as to the surplus of proceeds in the registry after all maritime liens have been paid in full.

7. Because material-men in all the States who render like services should be entitled to the same protection and have the same standing in court.

Legislation is needed on the subject, because by the decisions of all the circuit and district courts of the United States, except the seventh judicial circuit (in which are included the ports of Chicago and Milwaukee), State liens for materials, supplies, and repairs are held to take precedence of a vessel mortgage, while at those ports mortgages are held to be entitled to be paid in full before a dollar can be applied on claims for materials, sufferers, and repairs furnished or rendered vessels in their home ports.

The effect of the decisions in the seventh circuit is to discriminate, as Chicago and Milwaukee material-men think, unjustly against them.

No claims arise sufficient in amount to permit an appeal to the Supreme Court; therefore Congress alone can grant the required relief.

* * * * * * *

That the Supreme Court has been, so to speak, at sea upon the question of home and foreign port liens for material-men, and by its rules and through its decisions has changed its ground several times in the last fifty years, is shown by the Lottawana case. As Justice Miller, of that court, remarked, in Taylor *vs.* Steamer Commonwealth, the prevailing sentiment of the bar of the country, and of many able judges, is that the distinction between foreign liens and home-port liens of material-men has no solid foundation, and that these liens should be placed on an equality. That Congress possesses the power to legislate on the subject cannot be questioned, and that it is desirable that some act should be taken is evident from the injustice done to material-men Chicago and Milwaukee under the decisions in those districts, as w as from what the Supreme Court said on the subject in the Lottawa case.

* * * * * * *

It is conceded that the jurisdiction of our courts of admiralty exten to navigable rivers and lakes above the ebb and flow of the tide. It well settled that State courts can take no jurisdiction over the subje (Vose *et al.*, respondents, *v.* Cockroft *et al.*, appellants, 44 N. Y., 41 59 N. Y., 554).

The jurisdiction of the Federal courts is exclusive. Those courts ma *enforce* remedies provided by State legislation as far as it can be prac

ally done, but of necessity it leads to confusion and varying practic nder the legislation of different States.

The necessity of a uniform system framed in accordance with the spirit nd tendency of our admiralty rules and practice is manifest to all.

In the prevailing opinion in the Lottawana case, Judge Bradley says:

One thing, however, is unquestionable, the Constitution must have referred to a stem of law coextensive with and operating uniformly in the whole country. It rtainly could not have been the intention to place the rules and limits of maritime w under the disposal and regulation of the several States, as that would have de-ated the uniformity and consistency at which the Constitution aimed on all subjects a commercial character affecting the intercourse of the States with each other or ith foreign States.

In another portion of the opinion he adds:

But we must always remember that the court cannot make the law, it can only de-are it. If, within its proper scope, any change is desired in its rules, other than ose of procedure, *it must be made by the legislative department*. It cannot be supposed that e framers of the Constitution contemplated that the law should forever remain un-terable. Congress undoubtedly has authority under the commercial power, if no her, to introduce such changes as are likely to be needed.

In the dissenting opinion by Judge Clifford, he says:

State lien laws are too complicated and pregnant with too many conditions and ecial regulations in their machinery to be administered in a court of admiralty, even it be competent for this court to provide for the exercise of such jurisidiction by a strict court sitting as a court of admiralty.

Your committee entertain no doubt of the power of Congress to legis-te upon the subject, nor of the necessity of so framing the law as to cure uniformity of practice and the same right and priority of liens nd remedies in all cases to material-men, without reference to the omicile of the vessel furnished with repairs or necessaries. They there-ore report back a substitute for the bill under consideration, and recom-end its passage.

TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1699.

PUEBLO OF SAN FRANCISCO.

E 8, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

. PACHECO, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill H. R. 4928.]

e Committee on Private Land Claims, to whom was referred the bill (H. R. 4928) "to confirm the survey of the pueblo of San Francisco," respectfully report:

The object of the bill is to establish the outboundaries of the pueblo San Francisco, as granted to the city of San Francisco and its successors, by the act of Congress approved March 8, 1866, as follows:

ACT to quiet the title to certain lands within the corporate limits of the city of San Francisco.

Be it enacted by the Senate and House of Representatives of the United States of America Congress assembled, That all the right and title of the United States to the land ated within the corporate limits of the city of San Francisco, in the State of Calinia, confirmed to the city of San Francisco by the decree of the circuit court of the ited States for the northern district of California, entered on the eighteenth day of y, one thousand eight hundred and sixty-five, be, and the same are hereby, relinshed and granted to the said city of San Francisco and its successors; and the claim he said city to said land is hereby confirmed, subject, however, to the reservations exceptions designated in said decree, and upon the following trusts, namely: That the said land not heretofore granted to said city shall be disposed of and conveyed said city to parties in the *bona fide* actual possession thereof, by themselves or tens, on the passage of this act, in such quantities and upon such terms and conditions he legislature of the State of California may prescribe, except such parcels thereof nay be reserved and set apart by ordinance of said city for public uses: *Provided, ever*, That the relinquishment and grant by this act shall not interfere with or judice any valid adverse right or claim (if such exist) to said land, or any part reof, whether derived from Spain, Mexico, or the United States, or preclude a judiexamination and adjustment thereof.

This law, it will be perceived, refers to the decree of the circuit court the northern district of California, entered May 18, 1865, for the outndaries of the tract, which, with the exception and conditions imsed in said act of Congress, was thereby relinquished and granted. ese outboundaries were, on the north and east the bay of San Franco, on the west the Pacific Ocean, and on the south a line running e east and west from the bay to the ocean, so as to include four gues above ordinary high-water mark as the same existed on the 7th ly, 1846.

The case in which this decree had been rendered was at the date of e passage of this act of March 8, 1866, pending on appeal in the Supreme urt of the United States, which appeal was dismissed afterwards by

the Attorney-General of the United States in accordance with the will of Congress; and between March 1, 1867, and January 1, 1868, the survey was made, which it is proposed by the bill to confirm, with such limitations as conform to the express terms and conditions of the above-quoted grant or confirmation.

The plat of survey of said pueblo is indorsed thus:

Plat of the pueblo of San Francisco. Finally confirmed to the city of San Francisco by act of Congress approved March 8, 1866, and surveyed under instructions from the U. S. surveyor-general by James T. Stratton, dep. surv., between March 1, 1867, and January, 1868. Containing 17,754.77 acres.

The field notes of the Pueblo of San Francisco, from which this plat has been made, have been examined and approved, and are on file in this office, U. S. surveyor-general's office, San Francisco, August 13, 1868. L. Upson, U. S. sur. gen., Cal. (L. S.)

The decree of the circuit court to which the act of Congress refers in the decretal portion, omitting preliminary recitals, is as follows:

The land of which confirmation is made is a tract situated within the county of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high-water mark (as the same existed at the date of the conquest of the country, namely, the 7th of July, A. D. 1846), on which the city of San Francisco is situated, as will contain an area of four square leagues, said tract being bounded on the north and east by the Bay of San Francisco, on the west by the Pacific Ocean, and on the south by due east and west line drawn so as to include the area aforesaid, subject to the following deductions: such parcels of land as have been heretofore reserved or dedicated to public uses by the United States, and also such parcels of land as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals in proceedings now pending therein for that purpose, all of which said excepted parcels of land are included within the area of four square leagues above mentioned, but are excluded from the confirmation to the city. This confirmation is in trust for the benefit of the lot-holders under grants from the pueblo, town, or city of San Francisco, or other competent authority, and as to any residue in trust for the use and benefit of the inhabitants of the city.

FIELD, *Circuit Judge.*

SAN FRANCISCO, *May* 18, 1865.

It will thus be perceived that the duty of the surveyor was to locate, in 1867, upon the ground, by survey, the line of high-water on the Bay of San Francisco and on the Pacific Ocean, as it existed July 7, 1846—more than twenty years before.

During the intervening period material changes had taken place in the line of high-water mark on the Bay of San Francisco, arising from natural causes, the action of the winds and waves, and the accumulation of débris and sand along the shores. Other changes resulted from artificial causes, such as filling in with earth and rubbish, the erection of wharves, construction of landings, &c. And a survey of the line as it existed in 1846 could not be made otherwise than proximatively true. Absolute accuracy was then, and is now, an impossibility.

The surveyor who made this survey, James T. Stratton, was an experienced surveyor, of established reputation, and has since been United States surveyor-general for the State of California. The general objection to his survey has been that in portions of his line he has located high-water mark too far landward, and thereby his southern line has been carried too far south. But it is now too late to make another survey. The obstacles in the way are insurmountable. Numerous wharves, landings, and buildings have been constructed over the old water-line, and in places where formerly small vessels lay at anchor. Large additions to the shore have been made at a great expenditure of labor and money.

The survey of Stratton is mathematically correct. The only question raised is, whether or not he located the line of ordinary high tide cor-

rectly; and on this point there has been a difference of opinion. Several experienced surveyors and engineers familiar with the matter have recently expressed the opinion that the survey is a correct one.

Mr. Stratton, in his field notes, says:

Commenced survey March 1, 1867. Mag. var. 16¼° E.

On account of the natural and artificial changes that have taken place in the water-line of the city of San Francisco since its occupation by the Americans, in establishing the line of ordinary high tide from the Point San Jose military reservation to the mouth of Mission Creek, I was compelled to rely entirely upon the first official maps of said city made by William M. Eddy, the first city and county surveyor. A traced copy of the water-line portion of said map, certified by the present city and county surveyor, George C. Potter, on which the distances to the water-line, at the different angles as measured on said maps, are marked, and which was the basis to my calculations of the meander lines, will accompany these notes.

The water-line on Eddy's map was followed as nearly as practicable from the initial point of Stratton's survey to a point on his course No. 104, S. 45° W., where, at 18 chains 12 links, he says:

Intersect the line of segregation of salt marsh and tide lands, following the line of ordinary high tide, as surveyed by George C. Potter, city and county surveyor of San Francisco, and from this point I adopt his field notes as being the most reliable data I could obtain relative to the location of this line before the recent artificial changes took place.

Just how far he follows Potter's survey he does not state. Farther south he describes his survey as still "meandering along the line of ordinary high tide."

After reaching the Pacific Ocean at the end of course 201, he says:

Thence meandering along the line of ordinary high tide in the Pacific Ocean, adopting the field notes of L. Ransom, deputy surveyor, in subdividing township 2 south, R. 6 west."

After the approval of this survey, August 13, 1868, by Surveyor-General L. Upson, notice to the public of said survey and plat was given by advertisement in the Times and Alta, California newspapers, from 25th August to 21st September, 1868, inclusive. The city of San Francisco afterwards, by special counsel, filed objections thereto, the principal object of which was to obtain a survey of larger outline. It was claimed that large tracts of land should be included in the lines of the survey, but excluded from the computation of quantity. Among these were lands which he denominated "tide-marsh lands," which Stratton's survey represented as below high-water mark and did not embrace; and sterile sand-hills, which Stratton had included in computation as well as in his survey.

Mr. Upson retired from office on the 19th September, 1868, and his successor, Sherman Day, esq., in November, 1869, made a report on the exception filed by the claimant, expressing the opinion that all lands taken within the lines of survey must be computed in ascertaining the maximum of four leagues, but that some of the tide-marsh tracts that Straton had excluded ought to be *included in both the survey and the computation of quantity.*

If they are restored [he said] as part of the four square leagues, it will require that the southern boundary (of the pueblo lands) should be moved further northward.

It will be observed that although Mr. Day questioned in part the correctness of Mr. Stratton's lines in locating the line of high tide in 1846, his opinion was against the claim of the city to take into the lines of the survey several thousands of acres of tide-marsh, sand-dunes, or other waste and unproductive lands and yet exclude such worthless tracts from comptuation as part of the four leagues to which the grant was *restricted. The city aimed to* have the southern line of Stratton

removed further south, so as to take in more land in that direction; but Mr. Day reported that if Stratton's lines were amended to take in tide-marsh, the included marsh must be computed as part of the four leagues, and the southern line removed further north—a change which would be unwelcome to the city.

This report and the objections of the city remained on file in the General Land Office for a period of some ten years without any special notice or objection. The United States made no complaint as to the outboundary. The only unsettled matter appeared to be the survey of the United States military reservations alluded to in the decree of the United States circuit court. For the survey of these it happened that the same surveyor, Stratton, received instructions in February, 1866. He began work in March and finished it in April; the same, having no necessary connection whatever with the outboundaries of the pueblo, was executed without regard to any boundaries of the pueblo. It was completed before the survey of the lines of the pueblo was commenced, and the field notes were separately reported and filed April 27, 1866, though for convenience both surveys were platted on the same paper in 1868.

The committee have reported, at the suggestion of the Secretary of War, an amendment which will exclude all question, if any could have been suggested, that the bill without it could affect the survey of the military reservations. We do not understand that Stratton's surveys of the military reservations could be affected by the bill any more than if they had been made by Day or Smith; but, for abundant caution, have adopted the proposed amendment.

During the ten years and more since the survey of the pueblo was made, the city of San Francisco, the United States, and the State of California, have all acted upon the assumption that these outboundaries of Stratton were correct. The public has dealt in the lands upon both sides of the line as though the survey was a final one. The United States has closed the surveys of public land and sold lands as public up to and bounded by the south line of the pueblo as surveyed by Stratton, and the city and State have taken jurisdiction in accordance with Stratton's eastern line.

The State of California between 1870 and 1876 made more than one thousand sales of tide, marsh, and, water lots lying outside of Stratton's lines, and many of these lots have been improved by the purchasers with costly buildings. The titles to these improved lots would be now disturbed, if not destroyed, by any change in the location of the lines of the four leagues of the pueblo.

The city of San Francisco purchased also of the State at various times during the same period about 300,000 square feet of tide, marsh, and water lots—thus advertising to her citizens her faith in the title of the State, and the stability of the survey of the pueblo.

A resurvey that should include in the pueblo these lands sold by the State would extensively unsettle existing land titles, and be greatly detrimental to the prosperity of the city of San Francisco, by checking improvements in that portion of the city which has been recently improving with the greatest rapidity.

The legal questions that would probably arise could not be fully settled by judicial decisions for the next ten or twenty years.

The State of California has twice, by two sets of officers, asked that the survey of Stratton be confirmed, and recently the city of San Francisco has deliberately made the same request.

Reference is here made to the protest of Governor William Irwin, Attorney-General Hamilton, and State Surveyor-General Minis against *a resurvey of the pueblo*, dated November 14, 1877; and to the telegram *of* Governor Perkins, Attorney-General Hart, and Surveyor-Ge

eral Shanklin, dated January 30, 1880, asking confirmation of the Stratton survey (Exhibits Nos. 1 and 2;) and to the resolution of the board of supervisors of San Francisco, No. 14292, adopted December 29, 1879, (Exhibit No. 3), also requesting confirmation of this survey in behalf of the city of San Francisco.

As to the substantial correctness of this survey and other important facts, reference is made to the affidavits of L. L. Bullocks, late State tide land commissioner, and George F. Allardt, United States deputy surveyor (Exhibits Nos. 4 and 5).

At the request of the Secretary of the Interior, the Attorney-General of the United States, on the 8th September, 1877, directed the United States district attorney for California to appear and defend the interests of the United States in what are known as the pueblo lands of San Francisco, before the United States surveyor general.

On the 20th November, the district attorney made the following report:

SAN FRANCISCO, *November* 20, 1877.

HON. CHARLES DEVENS,
Attorney-General, Washington, D. C.:

SIR: I have the honor to inform you that in accordance with instructions contained in your communication to me of the 8th September last, I have appeared before the United States surveyor-general and represented the interests of the United States in the matter of the pueblo lands in San Francisco.

I am advised that in 1869 the plat of survey, papers, and all other documentary evidence in said case were transmitted to the Commissioner of the General Land Office at Washington.

As it is impossible to prepare a brief without such documentary evidence, I have stipulated with the attorneys representing the city of San Francisco and the occupants and grantees under said city, that no briefs or arguments need be filed with the surveyor-general here, but that briefs may be filed in the department at Washington under such regulations as may be prescribed by the honorable Commissioner of the General Land Office, or by the Secretary of the Interior.

Copy of the stipulation is herewith inclosed.

Not having access to the papers on file, I can say nothing as to the correctness of the Stratton survey. I beg, however, to suggest, generally, that said survey seemed to have been acquiesced in and treated by the city and county of San Francisco, and the State of California, as well as by most, if not all others, as a proper survey of the pueblo.

The city has laid out her streets and squares upon the official map in conformity with it. In her deeds to those in possession she has only undertaken to convey to lines of this survey, and upon the other hand the State has taken possession of, and sold and conveyed, all the tide lands outside of, and up to such lines.

Purchasers under these respective titles have paid taxes for a number of years, and in many instances expended large sums for the lands, and made valuable improvements thereon in good faith, and it would seem inequitable and unjust to disturb them, unless strong reasons exist for a different course.

While the United States has no beneficial interest in the lands bordering on Mission Bay, and is, therefore, not directly interested in the controversies with respect to tide lands, it is interested in having the Stratton survey confirmed as to the northern portion of the pueblo. Here this survey excepts and takes out of the pueblo lands the Presidio and Point San José military reservations, amounting to, in all, 1,393.34; the Presidio embracing 1,263.10, and the other 130.24 acres.

It is now gravely contended and pressed in this case with great pertinacity, by parties undertaking to set aside the survey, that these reservations were, in fact, void, and that it must be held upon a new survey that the government is entitled to less than twenty acres.

The government has made very valuable improvements upon these reservations, and if the Stratton survey be set aside it will be subjected to great litigation and expense, with at least a prospect of being finally ejected from parts of the land.

I believe titles will be unsettled, and much litigation created by setting aside this survey, and that substantial justice will be done to all by approving it.

These suggestions are based entirely upon my general knowledge of the matter and such facts as I have been able to learn from those who seem to understand the whole subject, and are, therefore, respectfully submitted.

Very respectfully, your obedient servant,

J. M. COGHLAN,
United States Attorney,

Your committee have no doubt of the propriety of Congressional action to bring this matter to a close. The confirmation of this claim by the act of Congress first herein quoted is in the nature of a relinquishment of title by the United States to the city which shall not affect any adverse legal rights of private claimants. The bill No. 4928, to confirm the survey, contains the same limitations and conditions, and does not affect the previous legislation relative to the same lands. It will be found, by reference to sec. 5 of the act of Congress of July 1, 1864, that by that law (13 Stat., 333) the great body of the lands embraced in this survey were relinquished by the United States to the city of San Francisco in trust, in 1864, and the text of the subsequent decree of the United States circuit court, in May, 1865, upon the pueblo claim, was prescribed by that law, to which the act of 8th March, 1866, is the effective supplement.

The section in the act of 1864, just referred to, is as follows:

SEC. 5. *And be it further enacted*, That all the right and title of the United States to the lands within the corporate limits of the city of San Francisco, as defined in the act incorporating said city, passed by the legislature of the State of California, on the fifteenth of April, one thousand eight hundred and fifty-one, are hereby relinquished and granted to the said city and its successors, for the uses and purposes specified in the ordinances of said city, ratified by an act of the legislature of the said State, approved on the eleventh of March, eighteen hundred and fifty eight, entitled "An act concerning the city of San Francisco, and to ratify and confirm certain ordinances of the common council of said city," there being excepted from this relinquishment and grant all sites or other parcels of lands which have been, or now are, occupied by the United States for military, naval, or other public uses, or such other sites or parcels as may hereafter be designated by the President of the United States, within one year after the rendition to the General Land Office, by the surveyor-general, of an approved plat of the exterior limits of San Francisco, as recognized in this section, in connection with the lines of the public surveys: *And provided*, That the relinquishment and grant by this act shall in no manner interfere with or prejudice any bona fide claims of others, whether asserted adversely under rights derived from Spain, Mexico, or the laws of the United States, nor preclude a judicial examination and adjustment thereof.

In view of these laws, and frequent practice in other cases where confirmations have been made by acts of Congress, there is manifest propriety in Congressional action to finally close the matter of the survey of the four-league tract granted, in trust and with limitations and exceptions, to the city of San Francisco, and called the pueblo of San Francisco.

There appears to be a great unanimity of sentiment at this time among the people of San Francisco in favor of the passage of this bill. The authorities of the city and of the State concur in asking the confirmation of the survey; and the United States has no antagonistic interest that is worthy of consideration in this connection, and appears fully committed to the recognition of the survey, so far as the location of the exterior boundaries are concerned.

Your committee therefore recommend the passage of the bill as amended.

EXHIBIT No. 1.

Whereas James T. Stratton, deputy United States surveyor, under the instructions of the United State surveyor-general of California, did, between March 18, 1867, and January, A. D. 1868, finally survey the pueblo lands of San Francisco, finally confirmed to the city of San Francisco by an act of Congress of the 8th day of March, 1866, entitled "An act to quiet the title to certain lands within the corporate limits of the city of San Francisco"; and whereas certain salt-marsh and tide lands were excluded from said survey, which were and are recognized as belonging to the State of California by reason of her sovereignty as such State; and whereas, under various *acts* passed by the legislature of the State of California, the officers thereof caused

lt-marsh and tide lands to be surveyed, platted, and sold to various citizens of ate; and whereas said purchasers paid large sums of money for said lands, and xpended much larger sums on the improvement of said property, and the under-, believing that they should not be disturbed in the possession thereof, and that itle ought not to be clouded by the action of the Government of the United ; and whereas it has come to the knowledge of the undersigned that an effort g made by certain parties to procure a resurvey of said pueblo lands in order id salt-marsh and tide lands may be embraced therein, and thereby become the of the city of San Francisco, under the provisions of said act of Congress ap-. March 8, 1866, when in truth and in fact said lands were the property of the of California long anterior, to wit, on the 9th day of September, A. D. 1850: , therefore, the undersigned, governor, attorney-general, and surveyor-general State of California, do most earnestly protest against any resurvey of said , so far as said salt-marsh and tide lands are concerned, because such resurvey tent would necessarily produce a serious conflict of title to lands which are now d owned by *bona fide* purchasers, who have long been in possession of the same. ritness whereof the undersigned have hereunto subscribed their names and the same to be attested by the great seal of the State of California this 14th November, A. D. 1877.

L OF STATE.]

WILLIAM IRWIN,
Governor.
J. D. HAMILTON,
Attorney-General.
WM. MINIS.
THOMAS BECK.

EXHIBIT No. 2.

[Telegram.]

SACRAMENTO, CAL., *January* 30, 1880.

(Received at 2.25 a. m., 31st.)

1. CARL SCHURZ, *Secretary of Interior, Washington, D. C.*

State has sold and given deeds to over six hundred persons, and has received ve hundred thousand dollars for salt-marsh and tide lands sold up to the Strat-e. The city has never claimed south of it. A new survey would involve great ion and embarrassment. The Stratton line has been agreed upon by city and for ten years. To change it would be a calamity.

GEO. C. PERKINS,
Governor.
JAMES W. SHANKLIN,
Surveyor-General.
A. L. HART,
Attorney-General.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, Cal., January 11, 1880.

n CARL SCHURZ, *Secretary of the Interior*:

further examination, we have to say in regard to the interest of the State, and rchasers from the State have in the pueblo survey of San Francisco, that, so far ney is concerned, nearly the whole of the amount realized from sales of tide lands Francisco was so realized from sales of tide lands outside of the Eddy red line, at some of the lands sold outside of the red line will be affected by a rejection of the on survey. We say this in justice to parties claiming under the city, who think rmer statement might mislead.

Respectfully, yours,

GEO. C. PERKINS,
Governor.
JAMES W. SHANKLIN,
Surveyor-General.
A. L. HART,
Attorney-General.

EXHIBIT No. 3.

OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS,
SECOND FLOOR, NEW CITY HALL,
San Francisco, January 2, 1880.

[Resolution No. 14293. (New series.)]

Resolved, That in the opinion of this board the Stratton survey of the pueblo is the only legal and proper definition of the boundaries, and that the boundaries as established by said survey should be finally confirmed by the Interior Department.

Resolved, That the Secretary of the Interior, before whom the mater relating to the boundaries of the pueblo decision, which relates to the presidio reservation of San Francisco, is now pending, be requested to take up and decide said case without further delay, and that officials of this city and county be directed not to ask for further postponement of said cause on behalf of said city.

Resolved further, That his honor the mayor of the city and county of San Francisco, be, and is hereby, requested to telegraph these resolutions to the Hon. Secretary of the Interior; and the clerk is hereby directed to advertise this resolution as required by law.

In the board of supervisors of San Francisco, December 29, 1879, adopted by the following vote:

Ayes.—Supervisors Schottler, Mason, Litchfield, Drake, Whitney, Eastman, Fraser, Taylor, Doane, Bayly, Torrey. Stetson.

JNO. A. RUSSELL, *Clerk.*

Copy of resolution No. 14293.

JNO. A. RUSSELL,
By SANDS W. FORMAN, *Deputy.*

EXHIBIT No. 4.

CITY AND COUNTY OF SAN FRANCISCO,
State of California, ss:

L. L. Bulloch, being duly sworn, deposes and says that he is a resident of the city and county of San Francisco, and has had personal knowledge of the pueblo of San Francisco for the last thirty years. That he makes this deposition solely for the purpose of showing the department fully what has been done by the State and city government with regard to the salt-marsh and tide lands in said city and county, heretofore considered the property of the State.

In 1847, by order of Edwin Bryant, then alcalde, a survey was made by Jasper O'Farrell, of Yerba Buena, now San Francisco, and 444 lots laid off, each 16½ by 50 varas, or 45.10 feet by 137.6 feet, none of which were upon the so-called Gores, or lying along or near Mission Creek. These lots were numbered by Eddy from 1 to 444, and are so designated upon his official map made in 1850.

In 1850 an actual survey in the field was ordered, and Wm. M. Eddy (then city surveyor) made such survey, and platted and mapped the same, a copy of which is before you, which demonstrated the fact that many of the lots sold by the alcalde, not included in the O'Farrell survey, were in the water and on salt marsh; that the purchasers did not enter into possession of these salt-marsh and water lots, but held a paper title on portions of them. That afterwards, in 1850 and 1851, indebtedness having accrued for the maintenance of hospitals, &c., and there not being any property to satisfy a judgment that had been procured against the town, an act was introduced in the legislature, and passed March 26, 1851, granting to the town a lease of certain portions of the State property for 99 years; said property was described and set forth in the act as beach and water lots, and to show that they were at all times covered by water (except that portion between high and low water) were indicated and surrounded by a red-line mark; but the property was not surveyed in the field; it was only known by the red-line mark drawn on the map. This has always been called the Red Line Map of 1851, and could not have been surveyed between the time of the passage of the act, March 26, 1851, and the date of its adoption, certified to by the mayor of the city and surveyor, in accordance with the act, which certificate was made April 4, 1851, as shown on the map, leaving only nine days' margin for the work to be done.

That the red line pretending to represent the high-water mark does in nowise represent it, only surrounding certain property known as water lots, representing only in *reality* what was low-water mark.

marshes, as now known as the Gores, and the land at the mouth of Mission and up Mission Creek and its banks, was covered or saturated daily by waters bay, and the lines of these marshes clearly indicated the line of ordinary high-mark called for by the decree that deterimned the pueblo, and that which is the red line was not drawn at high-water mark nor on the beach.

99-year lease was consummated, and the leasehold was sold to satisfy executions y Peter Smith *et al.*, against the city. That in 1853, under the administration n Bigler, governor, a commission was created to sell the reversionary interest of ach and water lots above referred to, which they proceeded to sell; some of the asers failing to pay for said lots, the interest in these lands reverted back to ate. And subsequently, under the administration of Governor J. Neely Johnson, er commission was appointed May 1, 1875, to resell the lots not paid for, and ut any authority of law) proceeded to survey in the field the salt marshes, now n as the Gores, and up Mission Creek; took possession of them, advertised and ne property, giving deeds to said land known as the Gores, and along said Mis-reek. All such sales afterwards were declared void in the case of Kishing *vs.* on. (See Cal. Rep. 13, page 56.) Some of the parties purchasing and having deeds d into possession, filled in and improved the property, expending large sums of on the same. In some cases the parties purchasing the State title in the Gores he original alcalde title. In others the purchasers of the State title did not hold e titles. In the case of Josephine D. Brown *et al. vs.* Charles Vallet *et al.*, in h district court (case now pending), 100-vara lot No. 182, represented by Edward ylor, the gentleman who was before you, who seeks to have the line changed, ne may have the alcalde title confirmed, as being a perfect title as against the

alde titles of this character (on original salt marsh) and the holders of such titles, e parties now seeking to have the Stratton survey set aside, purely for specula-urposes, and to extort money from parties who have filled in and improved the es in good faith. After the decision of the case of the People *vs.* Kishing, and tratton survey had been approved by United States Surveyor-General Upson, uestion arose among the property-holders on the gores and salt marsh along Mis-Creek as to how they could get their title from the State. They petitioned the and commissioners for their land, and in compliance with said petition an act passed by the legislature of 1870 (April 1, statutes California, p. 541) authoriz e board of tide-land commissioners to compromise with the owners and possess-cupying the gores and salt marsh along Mission Creek. That in compliance said act the commissioners did compromise and give deeds to said property; a such deeds with names and amounts is hereto annexed, and marked "Exhibit Said list covers at least two-thirds of the area of the gores, and all of the salt and tide lands along Mission Creek, as indicated by the tide land map now be-ou.

total amount received for sales, being $64,120.35, and the number of deeds giv-21, 547 of which were signed by the late Governor H. H. Haight (who at time of was partner of the aforementioned E. R. Taylor now appearing in this case Stratton survey), and the remainder (74) were signed by Governors Booth and co.

ore the tide-land commissioners, above referred to, under act of 1870, could sell lt-marsh and tide lands embraced and lying along Mission Creek, they had to e of an injuction, wherein certain parties claimed to own by reason of land-nts said salt-marsh and tide-lands. The injunction was determined by the me court of California in the case of Farish *vs.* Coon and others (California Re-0, page 33), which decision was rendered by the Hon. J. B. Crocket dissolving junction against the tide-land commissioners, upon the ground that the property ged to the State of California and the land-warrants could not be located on the (particularly referring to page 53 of the decision), and the people that were it under the several different characters of titles were subordinate to the title of tate.

or this decision was rendered the people in possession of the gores and the salt-and tide lands aloug Mission Creek acquiesced, and purchased their titles from de-land commissioners, as shown in Exhibit A.

rward this information to the honorable Secretary of the Interior from a sense tice as one of the tide-land commissioners giving these deeds, and in vindication purchasers who bought in good faith, with all the decisions and facts before and by the advice of the most learned counsels of the State.

ave not and never had any pecuniary interest in these lands, directly or indirectly. conclusion, I advocate the confirmation of the Stratton survey, because it is, in inion, in accordance with the strict letter of the decree of confirmation; and o have any other survey at this date would work an irreparable injury.

accumulated damages by reason of improvements far exceed any amount of which the State could be expected to return to innocent purchasers and holder

of lands which have always and uniformly been treated by the Federal, State, and city authorities as State property.

Further deponent saith not.

L. L. BULLOCK.

Subscribed and sworn to before me this 5th day of March, A. D. 1880.

[SEAL.] THEO. REICHERT,
United States Commissioner.

EXHIBIT No. 5.

432 MONTGOMERY STREET, *Room* 9.

George F. Allardt, being duly sworn, deposes and says:

My name is George F. Allardt; I am a surveyor and civil engineer, and have been engaged as such for 26 years, and in the State of California since 1858, and at present United States deputy surveyor. From 1868 to 1873 I was the surveyor and chief engineer for the board of tide-land commissioners of California, and in that capacity, in the years 1868 and 1869, I surveyed and mapped out all the salt-marsh and tide lands belonging to the State of California, and in the city and county of San Francisco, including the tide lands of Mission Creek and the salt marshes contiguous thereto. I found said Mission Creek to be an arm of the Bay of San Francisco, a tidal slough or estuary, width at high tide 270 feet wide at mouth, and with an average width of 140 feet, in which, throughout its entire length, the tide regularly ebbed and flowed, and that the same was navigated by sloops and small schooners and other craft, it having, in fact, been declared a navigable stream by an act of the legislature of March the 31st, 1854, and that said creek was no outlet for fresh water, except the surface drainage of the adjacent hills during the rainy season. I also found that the low lands contiguous to said Mission Creek were salt-marsh lands which were entirely submerged by the highest tide, at least eight times in each month, to a depth of 12 to 18 inches, and that at all flood tides the same were always saturated with tidal salt water, which meandered through said salt marsh in every direction, and percolated in innumerable small channels, veins, or subsidiary tidal sloughs, through said salt marsh, and that at the date of my said survey there was no question or difference of opinion among surveyors as to the nature of said lands, viz—in that they were actually salt-marsh and tide lands unfit for grazing, cultivation, or any other agricultural purposes. I further depose and say that I, as chief engineer, and said board as tide land commissioners, did adopt the exterior boundaries of the so-called Stratton survey of the pueblo of San Francisco as the true and official boundary line or line of segregation between the salt-marsh and tide lands belonging to the State of California, and the lands of the said pueblo, and that I did not survey, map out, or describe, nor did said board sell or dispose of any land or salt-marsh or tide lands lying within or included by the lines of said Stratton survey; that I ran the line of said land in the field, and said lines correspond with and are the same lines as fixed by Stratton; that in following said lines I found no difficulty presented in ascertaining the line of ordinary high-water mark on the salt-marsh and tide land along Mission Creek, and with my survey I fully identified the Stratton line as correct. In fact at that time there was little filling done in the neighborhood of Mission Creek, although at the present time the topography has been so changed that the line *could not* be now run from surface indications.

On Mission Bay, to the westward, where the red line as laid down on the red line map crosses the creek, and between that line and the Stratton line, there are about one hundred and twenty-three acres (123) of salt-marsh and tide lands; these lands were those mapped by me as belonging to the State.

The red line map before referred to was made for the purpose of locating the boundary line of the San Francisco beach and water lots, and to designate the land by the act of March 2, 1851, leased by the State, and for the purpose of fixing the line of water front beyond which improvements should not be pushed into the bay, and not to locate the line of high water; in fact, it crossed Mission Creek through 270 feet of water several feet deep.

GEO. F. ALLARDT,
United States Deputy Surveyor.

Sworn to and subscribed before me, this 9th day of February, A. D. 1880.

[SEAL.] THEO. REICHERT,
United States Commissioner.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1700.

BANGOR CUSTOMS DISTRICT, MAINE.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. BEALE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6451.]

Your committee, to whom was referred a petition praying a change in the Bangor customs district, in the State of Maine, have examined the same. In reply to a letter addressed to the Secretary of the Treasury, asking the views of that department, he says there is no objection to the change. Looking to the ways over which the foreign commerce from the Dominion of Canada is transported, it seems that great inconvenience must result from the present arrangement, which the change asked for will remedy, without any charge to the Treasury. Your committee therefore report a bill making the change, and recommend its adoption.

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TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1701.

RESERVOIRS ON THE UPPER MISSISSIPPI.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

[r. BEALE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6076.]

The committee to whom the subject of the construction of reservoirs ›on the rivers Mississippi, Chippewa, St. Croix, and Wisconsin was ıbmitted for examination, have given the same such consideration as e press of other duties permitted, and make the following report upon at and bill H. R. No. 6076, which has since been referred to them:

The proposal to dam up the surplus waters precipitated during the ɜsons of rain and snow, and utilize them in an increased flow along e river-beds, in seasons of drought, cannot in our day be regarded as experiment. Its practicability in limited application has been often ɜted, and, given the means, its success upon any scale is certain.

Nor can the proposition to construct reservoirs by dams upon these ·ers be regarded as a new one. So long ago as 1852, in the most exustive report yet made upon the most efficacious system for reclamaı of the delta of the Mississippi, Charles Ellet, jr., engineer, after reful surveys of many parts of the Lower Mississippi, presented the bject for the consideration of Congress, and with a mass of facts and ·ce of reasoning to our mind unanswerable, demonstrated, not only the ɜcticability of reclaiming from inundation the low lands of Mississippi, ·kansas, and Louisana, by reservoirs, but equally the other great ends supplying such volumes of water as would render the navigation of ɜ Ohio and Mississippi Rivers continuous through all seasons of the ar.

The later reports of Charles I. Allen and others are but more exteinded aminations in the direction of inquiry pointed out by Ellet; and, so r as they have gone, tend to fortify and confirm the conclusions to ıich he had come. It cannot be affirmed that all the facts upon which is theory rests have been definitely determined. Many details remain be examined and verified, which may modify the general outline of ›rks contemplated in 1852; but, from actual scientific observations alady made, enough is shown to justify the conclusion that of all the ans hitherto suggested this of reservoirs, aided by moderate and not exnsive levees along the deltas, promises the most successful solution of e great national problem of how to carry to the sea that commerce hich, yet in its earliest stage of development, is demanding annually creasing appropriations, and, at the same time, so fetter the great ather of Rivers as to render back to a safe culture a vast tract of low alıvial swamp-lands, capable of a production, if less in bulk, exceeding in alue that *of the famous delta of the* Nile.

This problem embraces a wide range of inquiries: The area of water-sheds drained by the many tributaries of the Mississippi; the annual quantity of rainfall over each area; the loss from filtration, evaporation, and absorption by vegetation; the quantity measured by cubic feet which reaches the various rivers above given points; the area of lands to be overflowed, and quantity of cubic feet of water to be held by dams of given heights; the character of soil for the secure foundation of the dams; the topography of the country to ascertain the proper location of dams; the force of the weight of the water, and the materials to be used to secure a certain and sufficient strength of dam to resist the pressure. To these are added the slopes of the water-ways, the velocity of the flow, the width of the bed, the effect of curves and of obstructions, the needed volumes of discharge from the reservoirs to give an equal and exact depth of water over certain distances.

Further, the minimum depth of the rivers in seasons of drought; the maximum in seasons of flood; the loss by evaporation from the surface as the waters pass onward in their courses—all questions to be solved from recorded observations through years of time subjected to the alembic of science, from which comes demonstrations by means of which art is to construct and model the works necessary to meet the demands of a valley, the grandest and richest upon which the sun shines.

For the Ohio River, Ellet collected a mass of information covering nearly every inquiry to which we have alluded, and with the exactness of demonstration which algebraic calculation furnishes, shows that by the construction of dams on the Allegheny (that river which rises within seven miles of Lake Erie and requires a cut of but sixty feet to turn its head stream into that lake, and furnishes, naturally, navigation by boats for two thousand four hundred miles to the Gulf of Mexico), and its twin sister, the Monongahela, at a cost of less than two millions of dollars, a continuous mean depth of five feet of water may be secured for the Ohio River from Pittsburgh to its mouth. At the date of that report, the year 1852, the estimated value of the commerce annually borne on the bosom of this one tributary of the Mississippi was two hundred and twenty millions of dollars; the increase in twenty-eight years is scarcely less than 50 per cent.; but assuming it to be only one hundred and eight millions, we have a sum of four hundred millions of dollars annually to be borne along this water-way.

The advanced state of physical science at this day enables man to grapple the forces of nature and bring within easy solution problems which, to the uninitiated, seem utterly beyond human accomplishment. What Ellet did as early as 1852 for the Ohio, Allen and his co-laborers are doing for the rivers embraced in this bill, which asks an appropriation of five hundred thousand dollars to begin those improvements which are to hold in reserve the flood of the Upper Mississippi to supply during the drought of summer sufficient water to give a continuous navigation for the commerce rapidly growing up along its banks.

The inquiries are partially made for the Missouri, the Arkansas, and the Red Rivers. The rainfall over the vast water-sheds which feed these great affluents of the main stream have, from observations, been recorded, and the areas of all the water-sheds surveyed. These are the preliminaries of that grand conception of so bettering, by artificial appliances, the great river of the States as to effectually guard against its trespasses upon the delta, and make it in all seasons subserve the purposes of navigation. That it is practical we have no doubt; that the growing necessities of that population which in the immediate future *will occupy* the whole extent of table-lands drained by the rivers will

demand its active prosecution we think admits of no question. The costs of completing reservoirs, levees, and outlets may reach the sum of twenty-five millions of dollars. Looking to the resources of this government, large as such sum actually is, yet its appropriation to such purpose would not perceptibly affect the current budget, and would, from its stimulating effects upon production and commerce, speedily produce refluent streams to more than fill the void in the Treasury caused by its abstraction. Indeed we are strongly inclined to believe that such measures would be true economy when compared with the present system of annual appropriations to remove bars, protect embankments, and fill in crevasses.

The estimates for the eleven dams for which sites have been selected upon the Mississippi, St. Croix, Wisconsin, and Chippewa, submitted in the letter of the Secretary of War of 7th February, 1880, with report of Capt. C. I. Allen, aggregate one million three hundred eighty thousand seven hundred ninety-one dollars and nine cents; with an annual estimated expense of two hundred thirty thousand four hundred eighteen dollars and sixty-six cents for repairs, supervisions, &c.

To begin these works, the bill to us referred asks an appropriation of five hundred thousand dollars. Entertaining the views expressed in the above, we would recommend the passage of the bill but for the considerations which we now submit.

A bill to provide for the appointment of a "Mississippi River Commission," for the improvement of said river from the Head of the Passes, near its mouth, to its headwaters, passed into law on the 28th day of June, 1879. Under this act the President and Senate have called into service a body of men selected expressly on account of their superior scientific attainments in that line of knowledge specially needed in maturing that system which shall best and most economically improve permanently the Mississippi River.

The 4th section of the act provides, "That it shall be the duty of said commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with the estimates of the costs thereof, for the purposes aforesaid, to be by him transmitted to Congress." This language commits to that commission the whole subject, embracing every question presented by the letter and reports of January, 1880, and all these rivers for which the bill asks a present appropriation.

Concurring fully in the wisdom of the enactment of June 28, 1879, raising a commission of experts to examine all plans which have so far been presented, as well as to devise such better plan as longer and larger experience might suggest, we deem it premature to advise any positive committal of the government to any specific system of works until this commission shall have made its report, and therefore recommend that the bill be reported adversely to the House.

I dissent from the report so far as it recommends that the bill be reported adversely to the House.

THOS. J. HENDERSON.

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TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1702.

HE CLAIMS OF BENJAMIN WEIL AND LA ABRA SILVER MINING COMPANY.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

. COX, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6452.]

The Committee on Foreign Affairs, to whom was referred the bill (H. 4899) to amend the act approved June 18, 1878, relative to the ards of the Mexican Commission, having had the same under con-eration, beg leave to report, as a substitute therefor, the accompany- bill:

On the 18th of June, 1878, Congress passed an act "to provide for the tribution of the awards made under the convention between the ited States of America and the Republic of Mexico, concluded on the rth day of July, 1868," the fifth section of which act is as follows:

EC. 5. And whereas the Government of Mexico has called the attention of the ed States to the claims hereinafter named, with a view to a rehearing; therefore it *enacted*, That the President of the United States be, and he is hereby, re-ted to investigate any charges of fraud presented by the Mexican Government as ne cases hereinafter named, and if he shall be of the opinion that the honor of the ed States, the principles of public law, or considerations of justice and equity re-e that the awards in the cases of Benjamin Weil and La Abra Silver Mining Com-, or either of them, should be opened and the cases retried, it shall be lawful for to withhold payment of said awards, or either of them, until such case or cases l be retried and decided in such manner as the Governments of the United States Mexico may agree, or until Congress shall otherwise direct; and in case of such al and decision, any moneys paid or to be paid by the Republic of Mexico in re-t of said awards, respectively, shall be held to abide the event, and shall be dis-d of accordingly: and the said present awards shall be set aside, modified, or ned, as may be determined on such retrial: *Provided*, That nothing herein shall onstrued as an expression of any opinion of Congress in respect to the character id claims, or either of them.

Under authority of this act the Secretary of State, to whom the mat-was referred by the President, invited the Government of Mexico to mit the proofs on which it relied to support the charges of fraud, and, r considering those proofs and the arguments of counsel for Mexico for the claimants, reported to the President, on the 8th of August, 9, as follows:

rst. I am of opinion that, as between the United States and Mexico, the latter rnment has no right to complain of the conduct of these claims before the tribu-of commissioners and umpire provided by the convention, or of the judgments given upon, so far as the integrity of the tribunal is concerned, the regularity of the eedings. the full opportunity, in time and after notice, to meet the case of the re-tive claimants, and the free and deliberate choice exercised by Mexico as to the hods, the measure, and the means of the defense against the same.

conclude, therefore, that neither the principles of public law nor considerations of ice or equity require or permit, as between the United States and Mexico, that the ards in these cases *should be opened* and the cases retried before a new interna-

tional tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representation of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimant shall fail in removing these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages. it may consist with a proper reservation of further investigation in this case to make the destribution of the installments in hand.

I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further couclusions on this point.

September 3, 1879, the Secretary made a supplemental report, as follows:

The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point:

1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the commission to which, under the provision of the convention, it was presented by this government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claiman reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

These reports having been approved by the President and published in the press of August and September, were communicated to Congress with a message of the 15th April, 1880, in response to a resolution of the Senate of the 27th of February.

The bill before this committee (H. R. 4899) contemplates the release of Mexico from the payment of these claims, and cannot be acted upon without an inquiry into their merits, which the committee, at this late stage of the session, has not the time to undertake. The committee believe that the investigation required by the honor of the United States can be most justly and exhaustively conducted by a judicial tribunal, possessed of the plenary powers to "coerce the production of evidence and compel the examination of parties and witnesses", which, in the opinion of the Secretary, are essential to a satisfactory examination of these cases; and the matter having assumed the shape of a question between the United States and the claimants, they report a substitute *for the bill* referred to them, by which the Court of Claims is directed to

nake the investigation, proceeding as in the case of a new trial of claims against the United States, granted on the ground of newly discovered evidence.

So far as the committee are informed, the proofs filed in the State Department have not yet been laid before Congress as recommended by the Secretary of State in his report of August 8, 1879. The committee do not therefore know the grounds on which the Secretary based the estimate which, in his report of September 3, he says he has made, "as to any probable or just reduction of the claim [of La Abra Mining Company] from further investigation," but these grounds will doubtless appear to the Court of Claims, to which the whole case is committed by the bill now reported.

The act of 1878 provided that if the President should "be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Albra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall *otherwise* direct." The President having recommended a method of investigation and practical opening of the awards upon which it is not necessary that the United States and Mexico should agree, payment of the money to the claimants is necessarily suspended "until Congress shall *otherwise* direct." The Committee have therefore provided in the bill which they now report for the payment to the claimants of such portions of their claims as the court may decide to be justly due, and have limited the time of the trial to one year from the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1703.

WILLIAM SCHUCHARDT.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COX, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 4552.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 4552) authorizing and directing the Secretary of the Treasury to pay to William Schuchardt, United States commercial agent at Piedras Negras, Mexico, the sum of $750, out of any money in the Treasury not otherwise appropriated, in full compensation for his services in obtaining testimony for the use of the United States and Mexican Claims Commission, appointed under the convention of July 4, 1860, with Mexico, have had the bill under consideration, and report:

That Mr. Schuchardt asks to be paid the sum of $750 for services rendered by him in February, 1871, in procuring defensive evidence for the use of the United States before the United States and Mexican Claims Commission.

From the evidence before the committee it appears that Mr. Schuchardt was employed to procure testimony in rebuttal of what were known as the "Piedras Negras cases," which were claims presented against the United States before the commission amounting to over $11,000,000, and on which the commission made a final award of only $50,000.

The Secretary of State, under date of May, 1880, wrote to your committe that he is "of opinion that the charge of $750 is reasonable and quite moderate."

The committee are of the opinion that the claim should be paid, and therefore report the accompanying bill and recommend its passage.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1704.

QUARANTINE AT SAN FRANCISCO.

NE 9, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

r. SPARKS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6140.]

The Committee on Military Affairs, to whom was referred the bill (H. 6140) to authorize the Secretary of War to allow the city of San Fran-sco to use a part of one of the islands in its harbor for quarantine urposes, having had the same under consideration, have amended said ll by striking out in the fourth line the words "one of the islands," and serting in lieu thereof "the government reservation at Lime Point, tween the point and Point Cavallo," and in line 5, after the word "pur-ses," inserting "for such time and"; and as thus amended your com-ittee recommend the passage of said bill.

The facts bearing upon the case are very well shown by a letter of the cretary of War, addressed to the Hon. Horace Davis, a member of this use from the State of California, which letter is herewith appended d asked to be made a part of this report.

WAR DEPARTMENT,
Washington City, May 13, 1880.

IR: Referring to your letter of the 23d ultimo, inclosing a copy of a resolution of State of California respecting a quarantine depot on one of the islands in the Bay San Francisco, I have the honor to inform you that this department is in receipt of elegram upon this subject from General McDowell, commanding the Division of the cific and the Department of California. This telegram bears date of the 8th instant, d is as follows:

"I see by to-day's telegrams that steps are to be taken to set off some portion of the blic lands in San Francisco Bay to be used by the city authorities for quarantine rposes, and that Angel Island is suggested as the most suitable station. I beg to resent that there are grave objections to the use of Angel Island, both as affecting military service and the city of San Francisco. A station can be had on Goat and, Peninsula Island, and, best of all, at Lime Point, between the point and Point vallo, *which* (!) there is a delightful shelter, water, and old buildings not now used the military."

rom this telegram it appears that there exists no objection to a quarantine station Goat Island, Peninsula Island, or at Lime Point, between the point and Point vallo, but that there are grave objections to the use of Angel Island for quarantine rposes.

With reference to your inquiry as to the authority of this department to grant the of a portion of Goat or Angel Island for the purpose in question, I beg to state at the Attorney-General, in an opinion dated May 13, 1869 (13 Opin., p. 46), holds hat the Secretary of War cannot convey to any person any interest in land belong-g to the United States, except in pursuance of an act of Congress expressly or im-edly authorizing him to do so"; and that, under this opinion, an act of Congress ll be necessary to authorize me to grant the use of any lands of the War Department the city of San Francisco for quarantine purposes.

Very respectfully, your obedient servant,

ALEX. RAMSEY,
Secretary of War.

Hon. HORACE DAVIS,
House of Representatives.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1705.

ARCHIBALD HUNLEY.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. WHITE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3499.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 3499) granting relief to Archibald Hunley, late private Company H, Thirtieth Regiment Illinois Volunteers, having had the same under consideration, submit the following report:

Your committee do not propose to argue in this case the right of Congress to set aside the findings of courts-martial generally. The facts appearing in evidence make so clear a case for the intervention of some proper jurisdiction for the relief of this soldier that the bill, with some amendment is favorably reported. It appears this soldier enlisted in August, 1861, in Company H, Thirtieth Regiment Illinois Volunteers; that he continued in the service as a faithful soldier until March, 1862, when he was taken sick and sent to a hospital and remained there until October, 1862. At the time he was sent to the hospital the usual practice of sending along with the soldier his descriptive list was not complied with, his captain, W. C. Rhoads, interfering to prevent it. Upon his return, the troops were mustered for pay; his captain, Shang (the former captain, Rhoads, having been promoted to major), marked him as the other soldiers on the rolls. When pay-day came, however, the major prevented his getting his pay, claiming that he had been absent without leave when at the hospital, although the soldier had his certificate of discharge from the hospital. There seems to have arisen some feeling between Major Rhoads and this soldier, and soon after this difference about the pay Hunley was court-martialed, the charge being for resisting an officer. The specification on which the charge was based was that after Sergeant Simeon Hornbuckle, of the same company, had been ordered to put private Graves in a tent because he was under the influence of liquor, and the sergeant getting into an altercation with this soldier, having him down in the mud and stamping him, Hunley came along and, speaking to the sergeant, said, "Sim, let him up and don't hurt him"; whereupon the sergeant, being angry, let Graves up and said, "Hurley, do you take it up?" Without further trouble the matter ended. This, then, appears to have been the resistance for which this soldier, Hunley, was court-martialed, convicted, and sentenced to discharge, with loss of pay and allowances. The evidence seems to be overwhelming that this was the whole offense for which this soldier was tried. It is submitted the frivolity of the offense and the severity of the sentence are such as appeal, certainly after this lapse of time, to the sense of justice in any impartial tribunal. Your committee therefore report in favor of the passage of the bill, with an amendment in the nature of a substitute for the *original bill.*

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1706.

NAVY CHAPLAINS.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. BRIGGS, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6454.]

The Committee on Naval Affairs, having had under consideration the bill (H. R. 69) for promoting the efficiency of the corps of chaplains in the United States Navy, report the accompanying substitute therefor and recommend its passage.

SECTION 1.

This section of the substitute provides that chaplains at the time of their appointment must be from 25 to 35 years of age, instead of from 21 to 35 as required by existing law, it being claimed that persons under the age of 25 are not ordinarily fitted for the responsible duties of chaplains.

This section also provides that a person, to be appointed a chaplain, must be at the time of appointment a regular minister of some religious denomination, in good standing; that he should be recommended by some ecclesiastical body, or by not less than five ministers of the denomination to which he belongs; and that he must have been a minister of some church for at least one year prior thereto.

The purpose of prescribing these qualifications is to secure the appointment of chaplains who have had some experience in the performance of ministerial duties, and who are of good standing and reputation in the denomination to which they belong, and among their own people.

SECTION 2.

This section is intended to correct what is clearly an error in the act of March 3, 1873.

Prior to the passage of that act all chaplains entered the service with the relative rank of lieutenant-commander, and were promoted to the relative rank of commander after twelve years' service, this being the highest rank held in the staff of the Navy.

The act of March 3, 1873, provided for a higher rank for the staff, and by virtue of its provisions, four chaplains were granted the relative rank of captain, seven the relative rank of commander, and the next lower grade (lieutenant-commander) were limited to seven, thus granting a relative rank to only eighteen chaplains, while the law allowed for seventy-four in the Navy. Six chaplains were thus left with no rank whatever, and from the passage of that act down to the present time,

a period of over seven years, have occupied that anomalous position, with great inconvenience to themselves and embarrassment to the Navy Department. If relative rank is necessary to any it must be to all. The effect of this section in the proposed bill is to leave the relative rank of eighteen chaplains the same as established by the act of March 3, 1873, and to provide that all others shall have the relative rank of lieutenant, to which there can be no valid objection.

SECTION 3

Relieves chaplains from all existing regulations in regard to dress, &c., and provides a costume neater and more appropriate than the one now prescribed. The change is so fully set forth in this section of the bill itself, any further report thereon is deemed unnecessary.

O

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1707.

STEAMER DE SOTO.

JUNE 9, 1330.—Referred to the House Calendar and ordered to be printed.

B. W. HARRIS, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6455.]

Committee on Naval Affairs, to whom was referred the bill (H. R. 88) for the relief of H. H. Beard, owner of the steamer De Soto, make he following report:

This vessel, the property of the claimant, was engaged in the business freighting on the Lower Mississippi in the years 1861 and 1862, be-een Columbus, Ky., Memphis, Tenn., and New Orleans, La. On the of January or the 1st of February, 1862, this steamer was impressed the military service of the Confederate States, by order of Lieut. R. M. Mason, chief quartermaster of General Leonidas Polk's corps he Confederate Army at Columbus, Ky., and continued in said serv- until the month of April, 1862, when, on the 7th of that month, was surrendered to Admiral Foote, in command of the naval forces he United States at Island No. 10, in the Mississippi River.

The claimant, by permission, remained on board after said impress-nt, and, under orders of the military authorities, commanded her.

After her surrender to the Navy the De Soto was used in the Quar-master's Department until October, 1862, when she was transferred to Navy Department, and continued in its service until August 17, 5, when, by order of the Secretary of the Navy, she was sold for the n of $26,250 and the money paid over to the proper authorities of United States. And that this amount has never been paid over to claimant or his agent or attorney, but remains as a balance in the easury of the United States, subject alone to the disposition of Con-ss, is an indisputable fact.

To recover this balance, the claimant is estopped from bringing his ion against the United States in the Court of Claims. *Vide* the act July 4, 1864 (13th Stat, 381).

Nor is authority conferred by Congress upon the executive branch of government to adjudicate on the rights of the claimant. On the ntrary, any supposed jurisdiction by the Executive, either expressed implied, for the use, damage, or appropriation by the United States property of this description is taken away by the prohibitory statute February 19, 1867 (14 Stat., 397).

Your committee accordingly recommend, that the claim or claims H. H. Beard for the value of the steamer De Soto, alleged to have

been captured as a prize of war at Island No. 10, in the Mississippi River, by the fleet of Commodore Foote, U. S. N., in the year 1862, be referred to the Court of Claims, with jurisdiction and authority to hear and determine the same, upon principles of justice and equity, to judgment with right of appeal; provided that no suit shall be brought under the provisions of this act after six months from the date of the passage thereof.

Your committee recommend the accompanying bill as a substitute for House bill No. 288.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1708

PATENTS FOR HOMESTEADS AFTER THREE YEARS.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. THOMAS RYAN, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 6345.]

The Committee on the Public Lands, having had under consideration the bill H. R. 6345, *make the following report thereon:*

Under existing law a homestead settler on the public land is required to occupy the same continuously five years after entry. This bill reduces the time to three years, but requires that the homestead laws must be observed in all other respects.

The committee think three years sufficient time, and therefore recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1709.

TITLE TO LANDS FOR CEMETERY PURPOSES.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. DEERING, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3573.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3573) to authorize the Seneca Nation of Indians, of the state of New York, to grant title to lands for cemetery purposes, having had the same under consideration, report as follows:

The Seneca Nation of Indians, of the State of New York, a part of whose people reside on the Allegany Reservation, in the county of Cattaraugus, N. Y., are a civilized people, obtaining their livelihood by agricultural pursuits and maintain educational and religious institutions to a considerable extent, comparing quite favorably with communities which surround them, as an abstract of the report of the United States agent will show. It appears that by act of Congress, on February 19, 1875, they were authorized to lease lands for railroad and village purposes. The commissioners appointed by the President in pursuance of the provisions of the act surveyed and mapped the village of Salamanca, on said reservation (located at the junction of the Erie, Atlantic and Great Western, and Rochester and State Line Railroads), and the lands for the cemeteary provided for in the present bill are included within the boundaries of the said village, and designated on the map of the commissioner who made the survey under said act of 1875. The council of this nation of Indians ask the passage of this bill, as will be seen by accompanying resolution, as they desire to provide for their people a place of Christian burial. There appears to be no written provision of law or treaty stipulation that would be violated or disiurbed by granting what seems to be the unanimous request both of the whites and the Indians of said Seneca Nation.

Your committee, therefore, report the bill back amendment and recommend that it pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1710.

THE UTAH AND NORTHERN RAILWAY COMPANY.

JUNE 9, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MCLANE, from the Committee on the Pacific Railroad, submitted the following

REPORT:

[To accompany bill H. R. 4874.]

The Committee on the Pacific Railroad, to whom was referred the bill (H. R. 4874) in relation to the Utah and Northern Railway Company, report that in the original act of incorporation, March 3, 1873, the company were granted right of way to and through Montana to a connection with the Northern Pacific Railway Company. At that time the line of that proposed railway was laid down in the extreme north of Montana. Since the change to the Yellowstone route the line has been changed to the south and lies between the Utah and Northern and its proposed destination. Under the general right of way bill the company could keep on, but in that case would be obliged to incorporate a new company for that portion of the road north of the crossing of the two roads, which would be inconvenient both to the public and the company. The right to continue the road to its destination under one organization instead of two is the only practical question involved in the first section.

The second section merely entitles the road to run branches up the mountain valleys into the mining towns on either side of its line, under the same organization and privileges as the several acts of Congress confer on the main line. The bill grants no additional privileges or right of way, and all these proposed things might be done under the general act, but in that case the company would have to organize under separate forms for each little branch that might be run up to a mine. The committee recommend the passage of the bill.

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TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1711.

VOIDANCE OF PATENTS.

NE 9, 1880.—Recommitted to the Committee on Patents and ordered to be printed.

r. VANCE, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill H. R. 6456.]

The Committee on Patents have had under consideration sundry bills ferred to them, relating to patents issued, reissued, and extended, ıere fraud, concealment, or misrepresentation are alleged to have en used in the procurement thereof, and now beg to submit the fol- wing report, with an accompanying bill, which they recommend as a ovision to cure a serious defect in the existing law.

By the act of April 10, 1790, creating the Patent Office, it was pro- led that where suit was brought for infringement, the defendant could ad all the defenses now allowed by the statute, *as well as fraud* in the ocurement of the original patent or the reissue or extension of the ne.

his provision was re-enacted in 1793, but in the act of 1870, revising l consolidating the patent laws, the defense of fraud was omitted.

t thus appears that whilst the most flagrant fraud or misrepresenta- n may be practiced in the procurement of a patent or its reissue or ension, there is to-day no statute provision by which it may be suc- sfully pleaded as a defense against a charge of infringement or against validity of the patent itself.

he Supreme Court, in The United States *v.* Stone, 2 Wallace, 525, says:

he United States may properly proceed by bill in equity to have a judicial decree nullity and an order of cancellation of a patent issued by itself, ignorantly or in take, for lands reserved from sale by law, and a grant of which by patent was efore void.

n Rubber Company *v.* Goodyear, 9 Wallace, 788, the court says:

xtended letters patent cannot be abrogated on any collateral proceeding for fraud 788).

he opinion of the court was delivered by Swayne, J. He refers (p.) to the 5th section of the act 1790, which provided for the repeal of ents, and reviews the legislation of Congress on that subject, and ıcludes that—

was the intention of Congress not to allow a patent to be abrogated in any col- ral proceeding except in the particular instance mentioned, *but to leave the remedy ll other cases to be regulated by the principle of general jurisprudence.*

he judge refers (p. 797) to Jackson *v.* Lawton, 10 Johnson, 23, where ancellor Kent said:

nless letters patent are absolutely void on the face of them, or the issuing of them without authority, or was prohibited by statute, *they can only be avoided in a regu- course of pleading, in which the fraud, irregularity*, or mistake is regularly put in issue.

The court further say, in referring to 1 Hening & Munford, 19, 187:

The patent in that case was for land; but, as regards the point here under consideration, there is no distinction between such a patent and one for an invention or discovery. If there be, *the case is stronger as to the latter.*

Eureka Company *v.* Bailey, 11 Wallace, 488, Judge Miller delivered the opinion—

A patent from the government cannot be impeached for fraud in procuring its issue in any other mode than by a direct proceeding to set it aside (p. 492).

Seymour *v.* Osborn, 11 Wallace, 543, Judge Clifford delivered the opinion. He referred to Railroad *v.* Stimpson, 14 Peters, 458; and Stimpson *v.* Railroad, 4 Howard, 384, holding that the fact of the granting of the reissued patent closed all inquiry into the existence of inadvertence, accident, or mistake, and left open only the question of fraud for the jury. The court say:

Since that time it has been definitely settled that neither reissued or extended patents can be abrogated by an infringer, in a suit against him for infringement, upon the ground that the letters patent were procured by fraud in prosecuting the application for the same before the Commissioner, (page 543).

Mourey *v.* Whitney, 14 Wallace, 434, the court say, page 441:

The general public is left to the protection of the government and its officers.

1. The fraud, if one exists, has been practiced on the government, and, as the party injured, it is the appropriate party to assert the remedy or seek relief.

2. A suit by an individual could only be conclusive in result as between the patentee and the party suing, and it would remain a valid instrument as to all others.

The patentee would or might be subjected to innumerable vexatious suits to set aside his patent, since a decree in his favor in one suit would be no bar to a suit by another party.

If, on the other hand, an individual finds himself injured, either specially or as a part of the general public, it is no hardship to require him to satisfy the Attorney-General that the case is one in which the government ought to interfere, either directly, by instituting the suit, or indirectly, by authorizing the use of its name, by which the Attorney-General would retain such control of the matter as would enable him to prevent oppression and abuse in the exercise of the right to prosecute such a suit (page 441).

The committee submit that from the foregoing it will appear that the Supreme Court constantly recognized this defect in the law, and sought to suggest means of meeting the difficulty by the application of the "general principles of jurisprudence."

To remove all doubt in the matter, and to relieve Congress from the consideration of questions which more properly belong to the judiciary, as well as to avoid all question of the constitutional power of Congress to repeal, limit, or vacate letters patent by legislative enactment subsequent to the issue of the patent, and to provide proper protection to all innocent users from the charge of infringement of patents that have been improperly obtained, your committee have prepared the accompanying bill, and hope that it may receive the unanimous approval of Congress. It cannot affect any valid patent properly obtained. A patent improperly obtained should not be permitted to levy tribute from the people.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1712.

JULIA A. ROSS.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6457.]

The Committee on Invalid Pensions, to whom was referred the petition of Julia A. Ross, praying that a pension be granted her, have considered the same, and report:

Julia A. Ross is the widow of Michael M. Ross, who enlisted as private in Company I, First Regiment United States Artillery, January 2, 1850, and who died of disease while in said service August 10, 1852. The claimant has remained his widow since his death, and is now quite aged, infirm, and poor.

The claim was rejected because there is no law authorizing the payment of such claim for pension.

In view of the fact that claimant's husband lost his life while in the military service of the United States, the committee think claimant should be pensióned; and we recommend the passage of the accompanying bill.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1713.

EMMA A. PORCH.

UNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4367.]

he Committee on Invalid Pensions, to whom was referred the bill (H. R. 4367) to place on the pension roll the name of Mrs. Emma A. Porch, of Cole County, Missouri, beg leave to report:

That the committee find that Mrs. Porch, during the war, was employed y the military authorities of the Federal Army as dispatch bearer and py; that in this capacity she was most active, and rendered important nd valuable service to the Army in the Department of Missouri. The overnment recognized these services, and Congress, by special act pproved June 14, 1878, paid her a moderate compensation therefor fter many years of impatient waiting. The evidence submitted to the mmittee, from her neighbors, the county officials, and her attending hysicians, abundantly establishes the fact that when she entered into he military service she was and had always been possessed of a robust nstitution and perfect health; that during her said military service he was much exposed to hunger, cold, and rain; that since the war er physical strength and health have been greatly impaired, and have ntinued to decline, until a few years ago she was stricken with paralysis, hich has partially destroyed the use of one side. She is now quite igh helpless and unable to work, and is a subject of charity, being ithout any property of consequence, and in constant need of medicine nd medical treatment.

Your committee think her case appeals most strongly to the govern- ent, which she served with such heroic spirit and fortitude in the day f its need, to help her now in her infirmity resulting from military rvices. No good reason is apparent for her exclusion from the bounty f the government because she was not an enlisted soldier. Her sex pre- ented the enlistment, but it enabled her to gain access to the enemy, pass safely by and through their lines, and thereby to render to the overnment a service as valuable as the soldier who bore a musket. Our committee therefore recommend the passage of the accompanying ill.

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H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1714.

FREELAND HUSTON.

E 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

HOSTETLER, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6458.]

Committee on Invalid Pensions, to whom was referred the petition of reeland Huston, a soldier in the Mexican war, having had the same nder consideration, would respectfully report:

hat Freeland Huston enlisted on May 8, 1847, at New Albany, Ind., and during the war with Mexico; he was not assigned to any com- ıy or regiment; he was sent from New Albany, Ind., to Newport racks, Ky., and from there, by order of General Brooks, he was sent New Orleans to go to Greenwood Island to do duty on Lake Pont- ırtrain; while there fifteen or sixteen of the men were detailed daily for or, discharging government stores and forage from vessels; while ıs engaged in unloading a vessel, a bale of hay fell upon the petitioner h such violence as to crush him to the ground, inflicting severe inju- , which became permanent, and which have ever since and down to present disabled him from manual labor. He applied for a pension, l was rejected on the ground that his name was not borne on the ruit rolls of any Indiana regiment serving in the war with Mexico. he petitioner was never mustered into the service as a member of any iana regiment; he was mustered into the Army as a detail, under mand of W. L. Crittenden of the United States Army, First Infantry. injury the petitioner received occurred on the 17th of June, 1847, l on the 18th day of July, 1847, he was mustered out of the United tes service, and on the 19th of July, 1847, he received his discharge ers at Greenwood Island and was sent home, where he was treated Dr. T. C. Mercer for his injury and who has treated him ever since, l who makes affidavit as to his soundness before enlistment, and the ent of his injury when he returned from the war, and its continuance n to the present. Three of his neighbors testify to the same thing l to his disability. The only question raised in the case is the record is service. The records show that Freeland Huston got a land-war- t for his services in the Mexican war, and he could not have got that hout a discharge. In view of these facts, taken in connection with great age of the petitioner, your committee would report favorably, l recommend that the bill accompanying this petition be passed.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1715.

LEWIS JOHNSON.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Lewis Johnson for pension, having had the same under consideration, beg leave to submit the following report:

They find from an examination of the papers in the case, on file at the Pension Office, that the petitioner has applied as the father of Hollis A. Johnson, who was private in Company D, One hundred and eighteenth New York Infantry, and who died at Portsmouth, Va., July 16, 1864, from disease contracted in the service.

The application for pension was filed December 7, 1877, wherein it was shown that the soldier was a married man at the time of enlistment, that his wife died six weeks after his enlistment, and that his mother died May 7, 1867.

It is also shown that the soldier remitted frequent sums of money while in the service to his father (the petitioner). An effort is also made in the original testimony to show the dependence of the father upon the son.

The Pension office, not being satisfied with the proofs presented, ordered a special investigation of the claim, which was made by a special agent of the office. This investigation revealed the fact, by sworn evidence, that the petitioner at the time of his son's death was a first-class journeyman carpenter, enjoyed good health, and by his labor derived a support for his family.

The point of non-dependence is clearly shown by the investigation of the special agent, and the committee fail to see that the petitioner has any claim under the pension laws; and they therefore report adversely upon his petition, and ask to be relieved from the further consideration of the bill (H. R. 1422) granting a pension to Lewis Johnson.

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)TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1716.

JOSEPH BAMBERGER.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Ir. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of Joseph Bamberger, private of Company E, Sixty-sixth New York Volunteers, asking for arrears of pension, having had the same under consideration, respectfully report:

We find from the papers in the case on file at the Pension Office, that he petitioner was a private of. Company E, Sixty-sixth New York Volnteers; that at the battle of Antietam he received a gunshot wound f both thighs, and that he was pensioned for the same at $2.66, comencing January 30, 1863; that he was then paid $3 per month p to September 3, 1879, when he was increased to $6 per month. He ow asks that he be allowed arrearages of pensison at the rate of $6 er month, to date from the beginning of his pension January 30, 1863. Ve find the first examination of the pensioner made by the examining urgeon of the office at New York, November 28, 1864, in which he is ecommended to be paid a one-third pension, and it is stated that the isability is liable to gradual decrease. From 1873 to 1879, the same oard of examining surgeons has examined the petitioner at his biennial xaminations and the examinations made on his application for increase. 'here are six reports of this board showing a full knowledge of his disbility, and the payments of pension to him have been made upon their ecommendation.

Your committee see nothing in the evidence before it that can induce t to change the action of the Pension Office, believing that the soldier as received all that he is legally entitled to. We therefore report dversely upon his petition, and ask to be discharged from the further onsideration thereof.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1717.

BERNARD BRADY.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. UPSON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2059.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2059) granting an increase of pension to Bernard Brady, having had the same under consideration, would respectfully report:

That Bernard Brady was a private in Company I, Fourth United States Infantry. From wounds received in the service, and in the line of duty, he now draws a pension of $24 per month. He applied for an increase of pension October 13, 1879, alleging the loss of left foot and the toes and heel of his right foot, rendering him totally disabled, and requiring the attendance of an attendant all the time. His application for increase of pension was rejected because his right foot was not amputated above the ankle. While it is true that he has a piece of a foot, that is, a foot without toes or heel, it is equally true that, so far as locomotion is concerned, he is worse off than if the foot was amputated. This is the view of the board of medical examiners at the Pension Office, and they so certify. He is a man virtually without feet, and, in the opinion of your committee, is entitled to the same pension now paid to men who have lost both feet in the service. Your committee therefore report back the accompanying bill and recommend that it do pass.

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TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1718.

LUCIUS D. ALDEN.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

r. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 4771.]

he Committee on Claims, to whom was referred the bill (H. R. 4771) for the relief of Lucius D. Alden, having had the same under consideration, respectfully submit the following report:

The bill provides for the payment of additional bounty of $100. By ıe act of July 28, 1866, it is provided that each soldier who enlisted in ıe Army of the United States after April 19, 1861, for a period of not ss than three years, and, having served the time of his enlistment, has een honorably discharged, and who is entitled to receive from the United tates a bounty of $100 and no more, shall be paid additional bounty of 100.

The claimant enlisted at Saint Joseph, Mo., August 11, 1862, to serve r three years, unless sooner discharged, in Company F, Thirty-third issouri Volunteers, and was in active service until after the battle of ashville. On December 16, 1864, by order of the Secretary of War, was detached from his regiment until further orders and ordered to port in person at the War Department, and on the 24th of December, 64, he was by order of the Secretary of War assigned to special duty that department; and on the 24th of June, 1865, by order of the Sec-ary of War, he was honorably discharged to take effect June 30, 1865. om the date of his enlistment to that of his discharge was ten months d twenty days. At the time of his discharge the war had virtually sed, and the volunteer forces of the United States were being dis-arged and mustered out of service. His own regiment was mustered t at Saint Louis, Mo., August 10, 1865.

Under the rules and regulations authorized to be provided by the cretary of War, for the payment of additional bounty, under the pro-ions of the act above referred to, the Secretary of War, among others, opted the rule that the provisions of the act excluded from its benefits hose discharged during enlistment by way of favor or punishment." e claimant believing himself entitled to the additional bounty under d act, applied to the honorable Secretary of War for its allowance to n, and was informed that the Secretary disallowed his claim for the ason that he was discharged "for favor" before the term for which he listed had expired.

On the 29th of April, 1880, the Assistant Adjutant-General, in answer a letter of inquiry addressed to him, inclosed a copy of the order for e discharge of claimant and said, "There are no other papers relating the *discharge of this man (Alden)* on file in this office."

The claimant, under the belief that a "discharge for favor," under the rule above mentioned, implied an actual request for such discharge, has presented his affidavit stating "that to the best of his knowledge and belief he never requested, nor did any one for him, to be discharged from his service as a soldier." It has been observed as a rule by the department officers, under the provisions of the law providing for additional bounty, that "soldiers who enlisted for three years and were mustered out with their organizations by order of the War Department, because the services of the latter were no longer needed by the government, are regarded as having served to the close of the war in respect to additional bounty."

The real question in this case, therefore, is, was the claimant "discharged for favor" within the meaning of the rule above mentioned? If he was, then clearly he is not entitled to the additional bounty claimed; otherwise he would seem to be as clearly entitled to a favorable consideration of his claim.

The evidence, however, clearly shows the following additional facts:

The claimant received his pay as a soldier from the date of said order detaching him from his regiment until the date of his final discharge, and in addition thereto he received further compensation amounting to about $1,100 per annum.

On the 20th of July, 1865, and prior to the expiration of the time for which he enlisted, claimant reported for duty at the War Department, having accepted a clerkship at a salary of $1,200 per annum.

In 1867 claimant was employed in the Treasury Department at a salary of $1,200 per annum, in which service he continued until 1870, when he resigned, his salary having in the mean time been increased to $1,400, then to $1,600, and finally to $1,800 per annum. In July, 1878, he was reappointed to a position in the Treasury Department at a salary of $1,200, and is still in the service of that department.

The claimant then, so far as the evidence shows, although not discharged by his own request, yet, through the influence of others or as a mark of special favor, was relieved of the onerous duties of a soldier and appointed to positions of comparative ease and with largely increased compensation. We cannot, in view of the facts, come to any other than the conclusion that the claimant was highly favored by the Secretary of War in granting him an unsolicited honorable discharge and providing him with constant employment. Assuming that the claimant was taken from the ranks and at once placed in a more lucrative and desirable position without any solicitation of himself or friends, we regard it as the highest evidence of merit on his part, and fully concur in the opinion of the Secretary of War that claimant was "discharged for favor," and hence is not entitled to the additional bounty claimed. We therefore report back the accompanying bill with a recommendation that it do not pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1719.

GEORGE D. GRAHAM.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Mr. SAWYER, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of George D. Graham, for pay for extra services as fireman in the Department of the Interior, together with the accompanying papers, having had the same under consideration, submit the following report:

The memorialist alleges that he was employed as a fireman in the engineer department of the Department of the Interior from about the 20th day of December, A. D. 1870, until about the 18th day of March, 1879, for which he received a compensation of $60 per month, except during the summer months, when he was paid the sum of $2 per day; that during the winter months he worked eight hours per day, except that from the 17th day of November, 1873, to the 17th day of April, 1874, he was required by the chief engineer, John Long, to work sixteen hours per day as a fireman; that prior to the 17th day of November, 1873, two night firemen had been employed, one entering upon duty at four o'clock p. m., and remaining on duty until twelve o'clock midnight, the other entering on duty at midnight, and remaining until eight o'clock a. m.,the memorialist being one of said night firemen; that on said 17th day of November, 1873, one of said night firemen was assigned to other duty, and the memorialist was compelled, against his protest, to perform the duty previously performed by both, and so continued in the performance of such double duty until the 17th day of April, 1874; that he was repeatedly assured by said chief engineer that another fireman should be assigned to relieve him from the performance of such double duty, but no change was made. He also alleges that, when he made the contract for service, it was agreed that he should be compelled to work only eight hours per day, and that he has never been paid for such extra work. He now claims pay for five months extra work, at $60 per month, amounting to the sum of $300. His memorial is supported by his affidavit, and also by affidavits of two other persons, who, in the main, corroborate the statements of the memorialist. One of these, however, testifies as to his belief without pretending to have any accurate knowledge on the subject; the other states, without qualification, that the memorialist performed sixteen hours of labor each day during the time he claims pay for extra labor.

Mr. John Long, the engineer referred to by the memorialist, in a communication dated May 5, 1880, says:

> Referring to the claim of Mr. Goorge D. Graham, a former employé of this department, for extra compensation for work done by him as a fireman from the 17th day of November, 1873, to the 17th day of March, 1874, I have the honor to say, that, during the period mentioned, *the department* had three relays of firemen, each working eight

hours per day, one relay going on duty at 8 o'clock a. m., another at 4 p. m., and the other at 12 o'clock midnight. Mr. Graham, while employed, was placed on night service with orders to go to work at 4 o'clock p. m., and remain until 12 o'clock midnight. He was not required to work more than eight hours per day to my knowledge; if he did so, it must have been voluntary on his part, as I never exacted extra duty from him.

Mr. S. J. Mills, assistant superintendent, in a communication dated May 15, 1880, referring to the claim of the memorialist, says:

During the time that he asks extra compensation, from November 17, 1873, to April 17, 1874, he was receiving pay by the month, $60, and was absent 16 days without loss of time. I am unable to find any record showing a contract with him for any specified number of hours, nor do I find anything indicating his performing more work than other employés. The privileges of leave of absence and sickness seem to have been granted to him as to others.

It will thus be seen that the material statements of the memorialist, referring to extra work alleged to have been performed by him, are contradicted by the statements of Messrs. Long and Mills, the former being the officer who memorialist alleges exacted the extra work for which he claims compensation.

The memorialist being a resident of the District of Columbia, it may safely be inferred, if his claim was really meritorious, his application would have been made before the expiration of six years after the alleged extra services were rendered. After a careful consideration of the entire evidence, we conclude that the memorialist is not entitled to the compensation he seeks, and recommend that he have leave to withdraw his memorial.

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1720.

MRS. SALLIE H. PALMER.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

SAWYER, from the Committee on Claims, submitted the following

REPORT:

Committee on Claims, to whom was referred the memorial of Mrs. Sallie I. Palmer, having had the same under consideration, beg leave to submit he following report:

he memorialist claims the sum of $1,505 to be due to her from the ited States, and alleges, under oath, in substance, that on the 12th of February, A. D. 1878, she was regularly appointed as laborer in Patent Office at an annual salary of $720, said appointment contain- the conditions that she take the oath of office required and file the ie with the department and report for duty, with which conditions alleges she complied on the following day; that she has ever since l herself in readiness to receive and perform the work which was to e been given her, namely, the making of file wrappers, it having been eed that she should have the said work and perform it at her home; t the officials failed to send her the work as agreed upon, upon her orting for duty, although she repeatedly applied for said work and red to perform it according to said agreement, which she alleges still ains unrevoked, by reason of which facts she claims the above-men- ied sum, being the balance due her for the time she claims she should paid, viz, from February 12, 1878, to April 12, 1880.

t appears from communications from different officers in the Interior partment that the appointment of Mrs. Palmer was made as she al- es; that it was understood that on account of the illness of her hus- id she might do the work at home, although it was not a part of her pointment. Soon after she appeared and took the oath of office the ws came of the death of her husband, and for that reason the work igned was not sent to her to be performed at her home, but she was ified that she would be required to do her work in the office; that did not report for duty in the office. It further appears that on May 1878, Mr. Commissioner Spear recommended that she be appointed $30 per month and assigned to duty in making file wrappers, and t if such authority was given that her former appointment be revoked, that up to that time she had not reported for duty under her ap- ntment of February preceding; that on July 1, 1878, the recom- ndation of the Commissioner (Mr. Spear) was approved, and the ap- ntment of Mrs. Palmer was revoked, and authority was given to ploy her in making file wrappers, at $30 per month; that it does t appear that she was employed under that authority, but that on igust 14, 1878, she was informed by the chief clerk that her services ere not needed, *as an arrangement* had been made whereby the file

wrappers could be made in the office without extra cost. It is distinctly stated in the communication referred to that she never reported for duty until her appointment was finally revoked, and authority was granted to employ her at a lower salary, which authority was never exercised; that the exigency which gave rise to the understanding that she should be permitted to perform the work at home ceased with her husband's death, which occurred before it was possible to give her any work, and that she was thereupon notified that she could only have work by reporting for duty in the office, which "she has steadfastly refused to do."

In view of the foregoing, as the claim of the memorialist is founded upon an alleged contract and a breach thereof by the United States, and there seems to be a wide disagreement as to the real facts, your committee are of the opinion—the memorialist having a complete remedy at law—that she should have leave to withdraw her memorial, and we so recommend.

The committee further beg leave to recommend, if deemed consistent with the public interest, the memorialist being the widow of a Union soldier, and, from the entire evidence, fully competent to fill the position to which she had been assigned, that she be appointed to some suitable position in the department.

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1721.

TIMOTHY McCORMICK.

NE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5837.]

he Committee on Claims, to whom was referred the claim of Timothy McCormick, together with the accompanying bill (H. R. 5837), having had the same under consideration, submit the following report:

The testimony in this case establishes the following facts:
In the month of June, 1867, the claimant was employed under a contract with Messrs. Shoemaker, Miller & Co., in the construction of the road-bed of the Union Pacific Railway Company, eastern division, from station 1637 to station 1901, on sections 232, 233, 234, 235, and 236, of the sixth forty miles of said road. On the 22d day of June, 1867, while so employed, and while a large number of workmen were engaged in working on said road-bed, the Cheyenne tribe of Indians attacked the works, and drove off the claimant and his workmen; and on the 26th day of said month said tribe of Indians set fire to and burned the camp of claimant and his men, then situated and being at mile 234 of the Union Pacific Railroad, eastern division, at Cow Creek, and destroyed, carried away, or used the provisions, tents, cooking and other utensils which the claimant had provided and stored in his said camp for the use of himself and his men. Accompanying, and as a part of the testimony of claimant and two of his workmen, is a statement showing the kind and value of the property thus taken or destroyed. The value thereof is stated to be the sum of $2,217.75. Pursuant to the provisions of the 7th section of an act approved May 29, 1872, the Hon. Secretary of the Interior Department, on the 8th day of January, 1874, transmitted said claim to the Speaker of the House of Representatives, together with a copy of a letter from the Commissioner of Indian Affairs, dated April 8, 1873, for the consideration of Congress, as contemplated by the said 7th section of the act aforesaid. The Commissioner of Indian Affairs in his letter above referred to says:

I have the honor to submit herewith the claim of Timothy McCormick, for $2,217.75, on account of a depredation alleged to have been committed by Cheyenne Indians in June, 1867. At the time of the alleged depredation Mr. McCormick was a contractor on the eastern division of the Union Pacific Railroad. The Indians attacked his men while at work, and driving them off, destroyed or carried away a large quantity of provisions and a few other articles stored in claimant's camp. The Indians in council admitted the fact of the depredation. It is otherwise fully established by the testimony adduced. With respect to the exact amount and value of the articles taken, the testimony is not so satisfactory. Doubtless the claimant suffered loss by the depredation, but it may fairly be questioned whether he lost to the extent claimed. He furnished a schedule *of the articles stolen* or destroyed, to the correctness of which

affiants Clancy and Gilfoyle testify in a general way, not giving any specific reason for their general belief, nor any conclusive proof of their knowledge with reference to the facts set forth in said schedule. It is thought that the claim might, without injustice to the claimant, be reduced one-half, and it is recommended that it be allowed with such reduction.

In corroboration of the views of the Commissioner of Indian Affairs as to the value of the goods taken or destroyed, it may be remarked that the affidavits in support of the claim appear to have been all prepared by the same hand; and the exact agreement of three of the affiants as to the precise number of pounds or gallons of the several articles taken, and from which it is to be fairly presumed the workmen were daily deriving their supplies, renders it highly probable that a high estimate both as to quantities and values was to cover contingencies placed upon the articles taken or destroyed, and that no such accurate statement thereof could easily have been made.

Your committee are satisfied that the claimant suffered a heavy loss, as alleged, by the hands of the Cheyenne Indians, and that he is entitled to compensation, and after a careful consideration of the evidence we recommend that he be paid the sum of $1,108.87, and that the accompanying bill be amended in accordance with this report and passed.

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6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1722.

CHARLES COLLINS.

UNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

[r. SAMFORD, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1346.]

he Committee on Claims, to whom was referred the bill (S. 1346) for the relief of Charles Collins, have had the same under consideration, and beg leave to report:

This case has been considered in the Senate, and from the report ıade to that body in February, of this year, we extract the following :atement, which is fully borne out by the papers submitted in the ıuse:

The claimant was on the 23d of November, 1877, and still is, postmaster of Berlin, 'orcester County, Maryland. On the night of that day the store-house of the aimant, in which the post-office was kept, and which he had securely locked, was ırglariously entered through a second-story window, which was forced open by a jimmy."

The burglars proceeded downstairs and forced open a bolted door at the foot of the airway, and thus obtained access to the room used as a store and post-office.

They robbed the post-office of stamps to the amount of $337.36, and robbed the store f money and goods to a considerable amount.

The postmaster and his assistant both swear that the post-office was burglariously ıtered and robbed, at the time and in the manner already stated, and without any egligence on the part of either of them.

Disinterested residents of the town, under oath, fully corroborate them as to the act and manner of the entry and robbery of the post-office, and further swear that he postmaster and his assistant are men of excellent character, and that they do not elieve the robbery occurred in consequence of negligence on the part of either. The ostmaster and his assistant further explain, under oath, that the postmaster always ept the money received for stamps, postal cards, &c., entirely separate from his in- ividual money, so that on any day of the year they could tell the amount of post- ffice funds and stamps on hand, and that consequently they were able to ascertain adily and accurately that the stamps of which he was robbed were of the value of 337.36.

Your committee applied to the Post-Office Department to ascertain the probable nount of stamps in the possession of the postmaster unsold at the time of said rob- ry, and were informed that the amount in his hands at the time would seem from an timate made in the office of the Postmaster-General to be about $340. The Post- ffice Department was at once notified of the robbery and of all its details which uld be ascertained. An investigation into the circumstances was made by one of special agents, who made a thorough examination of the premises and into the 'cumstances, and reported that his "examination of the office and places broken open the robbers shows conclusively that every precaution was taken by the postmaster make the office secure, and that nothing more could have been done."

He further reported "that the postmaster is a respectable, honest citizen and faith- l officer, and stands equal in every particular with any citizen in the county."

A large number of the residents of the town of Berlin also certify to the fact of the ss, as above stated, and that it occurred from no want of diligence or care on the art of the postmaster, and *join in* the request that Congress may grant him the relief

to which they feel satisfied he is properly and eminently entitled, and which they declare they feel assured will meet with the entire approbation of their whole community.

The committee are clearly of the opinion that the claimant is entitled to the relief he seeks, but as both the bills referred to them are defective, they report a new bill as a substitute for those referred to them, and recommend its passage.

The committee are of the opinion the claim is just, and the bill is therefore reported back with the recommendation that it do pass.

)TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1723.

EDWARD P. VOLLUM.

JNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. L. H. DAVIS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 296:]

The Committee on Claims, to whom was referred the bill (S. 296) for the relief of Edward P. Vollum, have duly considered the same, and submit the following report:

This bill requires the Secretary of War to ascertain the value of the roperty lost by Asst. Surg. Edward P. Vollum, who, while under orders f the War Department, was on board the brig Fawn, bound for Fort mpqua, Oregon Territory, when she was wrecked on the 21st day of ovember, 1856, and provides for the payment of such sum; provided at no allowance be made for any property except what was useful, ecessary, and proper for such an officer while on the voyage and enged in the public service.

Your committee referred the bill to the Secretary of War, and received ll information touching the premises, and through him the following port of the Adjutant-General, to wit:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, April 4, 1878.

SIR: I have the honor to return herewith communication of March 26, 1878, from on. George E. Spencer, chairman Senate Committee on Military Affairs, and accomnying petition of Asst. Surg. (now Surg.) E. P. Vollum, for reimbursement of value personal property lost by the wreck of the brigantine Fawn, in November, 1856, id to report as follows:

Major-General Wool's report of the loss of the "Fawn" (laden with military stores, id on which Surgeon Vollum was a passenger), with the papers therein referred to, published in Ex. Doc. No. 76, House of Representatives, Thirty-fourth Congress, ird session, pages 250–252.

The reports in question, together with the copies of letters transmitted herewith, rnish all the information bearing on Surgeon Vollum's petition afforded by the recrds of this office.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

The HON. SECRETARY OF WAR.

FORT UMPQUA, O. T.,
December 16, 1856.

SIR: I have the honor very respectfully to lay before you the following statement nd request:

On the 21st day of November last, while traveling to this post, pursuant to Special rders No. 117, dated Headquarters Department of the Pacific, Benicia, Cal., October 6, 1856, I was shipwrecked off the mouth of the Sinsclau River, O. T., and sustained loss in personal property to the amount of $700.

I respectfully request that you will call the attention of the Secretary of War to my loss, and the circumstances under which it occurred, with a request that he present a claim to Congress in my behalf for the above amount.

I have the honor, very respectfully, to be your obedient servant,

EDW. P. VOLLUM,
Assistant Surgeon, U. S. A.

Col. S. COOPER,
Adjutant-General, U. S. A., Washington, D. C.

[Indorsements.]

Respectfully transmitted with the earnest recommendation that it may meet with the support of the proper authorities. Between this place and San Francisco there is no means of communication upon which an officer can rely for getting from one to the other point except sail-vessels.

Respectfully,

J. STEWART,
Captain Third Artillery, Commanding.

Approved and respectfully forwarded.

JOHN E. WOOL,
Major-General.

For letter April 21, 1857—reply to foregoing—see bottom of this page.

ADJUTANT-GENERAL'S OFFICE,
Washington, January 7, 1858.

SIR: At the request of Asst. Surg. E. P. Vollum, Medical Department, U. S. A., I have the honor herewith to transmit to you, as chairman of the Committee on Military Affairs on the part of the Senate, the memorial of that officer for reimbursement of losses sustained by him by the wreck of a transport upon which he was proceeding from San Francisco, Cal., to Umpqua City, Oreg., in the month of November, 1856.

I am, sir, very respectfully, your obedient servant,

S. COOPER,
Adjutant-General.

Hon. JEFFERSON DAVIS,
Chairman Military Committee, U. S. Senate, Washington, D. C.

ADJUTANT-GENERAL'S OFFICE,
Washington, January 7, 1858.

SIR: The memorial and accompanying papers forwarded with your letter of November 1, 1857, have been transmitted to Hon. Jefferson Davis, chairman of the Committee on Military Affairs on the part of the Senate, this being the disposition of them deemed to be the best for the attainment of the purpose you have in view.

I am, sir, very respectfully, your obedient servant,

S. COOPER,
Adjutant-General.

Asst. Surg. E. P. VOLLUM, U. S. A.,
Fort Umpqua, O. T.

ADJUTANT-GENERAL'S OFFICE,
Washington, April 29, 1858.

SIR: I transmit herewith a letter which has been received from Asst. Surg. E. P. Vollum, U. S. A., inclosing an account in detail of his losses at sea in November, 1856, to be placed with the memorial of that officer for reimbursement of said losses, which was sent to the Military Committee of the Senate with my letter of January 7, 1858.

I am, sir, very respectfully, your obedient servant,

S. COOPER,
Adjutant-General.

J. F. CALLAN, Esq.,
Clerk Military Committee, Senate, Washington, D. C.

ADJUTANT-GENERAL'S OFFICE.
Washington, April 21, 1857.

SIR: Your letter of the 16th of December last relative to the losses you sustained by shipwreck in the month of November, 1856, was not received until the 2d ultimo, too late to permit any action in the matter at the late session of Congress.

I am now instructed to inform you that your petition for relief should be made

direct to Congress, and may be addressed to any member with whom you may be acquainted or to the chairman of the Military Committee of either branch.

I am, sir, very respectfully, your obedient servant,

S. COOPER,
Adjutant-General.

Asst. Surg. E. P. VOLLUM, U. S. A.,
Fort Umpqua, O. T.

The order under which Assistant Surgeon Vollum acted is as follows, to wit:

[Special Orders No. 117.]

HEADQUARTERS DEPARTMENT OF THE PACIFIC,
Benicia, Cal., October 16, 1856.

[Extract.]

* * * * * * *

2. Asst. Surg. Edward P. Vollum will proceed to the post on the Umpqua, O. T., and relieve Assistant Surgeon Milhaw, who will then comply with the instructions given in Special Orders No. 44 of May 1, 1856, from the War Department.

By command of Major-General Wool.

W. W. MACKALL,
Assistant Adjutant-General.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
Washington, April 4, 1878.

Official extract.

L. H. PELOUZE,
Assistant Adjutant-General.

Dr. Vollum duly presented his petition for relief in 1857, 1858, 1861, 1864, and then in 1878, and at one time a favorable report was made in the Senate, but no final action had. No action seems to have been had at other times. Dr. Vollum has therefore not been negligent in presenting his claim.

Dr. Vollum was on board this vessel under orders to go from California to Umpqua, Oreg., the only mode of conveyance at that time, and was in the discharge of official duty, and without fault or neglect on his part, and unavoidably, the vessel was wrecked and his necessary property—personal effects—was wholly lost.

There is a long line of precedents giving relief in similar cases.

Your committee believe Dr. Vollum is fairly entitled to relief, and report back the bill without amendment and recommend its passage.

○

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1724.

JOHN H. MORRIS.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 185.]

The Committee on Claims, having had under consideration the bill (H. R. 185) for the relief of John H. Morris, late collector of internal revenue of the tenth district of the State of New York, beg leave to report thereon:

This case was fully reported at the second session Forty-fifth Congress. (See House Report No. 904.) While not concurring fully in the reasoning of said report, your committee does concur in the conclusion then reached, viz, "that the claimant is entitled to the sum of $739.84 for his services for the year ending April 7, 1863, and for his services for the three additional days he should be allowed compensation at the rate of $10,000 per year, which would be the sum of $83.33, in all the sum of $823.17. Your committee therefore report back said bill and recommend its passage.

6TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1725.

HENRIETTA BUGGERT.

NE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1742.]

e Committee on Claims, having had under consideration the bill (H. R. 1742) for the relief of Henrietta Buggert, beg leave to report thereon:

The claim is for crops, household and other personal property alleged have been destroyed or taken away by the Sioux Indians in their morable outbreak in the State of Minnesota, in the year A. D. 1862.

The claimant and her husband, Louis Buggert, with their five children, re living upon a farm in the town of Sigel, in the county of Brown, said State, not far from New Ulm. The outbreak was sudden d unexpected. Buggert with his wife and children sought safety in w Ulm. The danger was so imminent that he was compelled to aban- n everything, except a few articles hastily gathered up in the flight. e whole section round about his home was immediately overrun by the vages, and all personal property which could not be carried away ntonly destroyed. Buggert was killed by the Indians on the 23d day August, 1862, while acting as captain of a company in defense of New m.

After the suppression of hostilities, and in December, 1862, ad- nistration was had upon the estate of the deceased Louis Buggert in e probate court of Brown County, Minnesota, and on the 13th day of at month a surviving brother, William Buggert, was appointed ad- nistrator of said estate by said court, who accepted such appointment d was duly qualified. The ravages of the Indians and the destruction property were so widespread and the disaster of such an appalling aracter that prompt relief upon the part of the general government s universally demanded, and in February, A. D. 1863, an act was ssed, not only for the immediate relief of the victims of the outbreak, t designed also to secure permanent indemnity for the losses incurred. S. Statutes at L., vol. 12, pages 652, 653, and 654.)

In pursuance of this act the President appointed A. W. V. White, i R. Chase, and Cyrus Aldrich, "for the purpose of ascertaining the ount of said damages and the persons who had suffered the same."

To these commissioners William Buggert, as the administrator of the tate of Louis Buggert, presented a claim for the damages sustained by e estate in the detruction and deportation of property.

The claim appears to have been made out in due form and to have nsisted of an itemized account supported by affidavits.

The claim was rejected by the commissioners. The rejection seems to

have been due to a misapprehension of fact. It appears from the evidence submitted to your committee that William Buggert resided near his brother, Louis Buggert; that the brothers were joint owners of a large portion of the property destroyed; that William Buggert was also a claimant in his own right before said commissioners; that in the preparation of their respective claims the joint property was divided, each party claiming for an equal number of acres or bushels, as the case might be. Owing to this circumstance the commissioners fell into the mistake that the claims were identical, the one the duplicate of the other, and, as a consequence, concluded to reject both.

The report of the commissioners to the Secretary of the Interior is found in Ex. Doc. No. 27 to No. 50, first session Thirty-eight Congress, vol. 9, 1863–'64. In their report the commissioners say:

> We have examined and audited two thousand eight hundred and eighteen claims and made awards thereon, which from time to time, with the complaints and proofs in each, have been transmitted to you by mail. Of the cases so audited one hundred and eighty-three have been rejected, and in two thousand six hundred and thirty-five damages have been allowed; no testimony has been offered in seventy-six cases, and forty-six complaints, after being filed and registered, have been withdrawn by the parties or their attorneys. The petitions remaining on our files in which there has been no proof or award are herewith transmitted to you for such disposition as your department or Congress may think proper to make of them.
>
> It is proper to say of the cases rejected some were thus adjudicated for want of sufficient evidence, and some because in our opinion they did not fall within the class for which the act contemplated relief.
>
> As to a few of the former class it has been represented that, in the pressure of our business, the facts were misapprehended by us and the decision was consequently erroneous. In others that there was a hasty submission on insufficient testimony, owing to unavoidable embarrassments, which defect the parties can now supply. Some of the evidence received since our awards were made we herewith transmit to you.

The claim of Henrietta Buggert, through the administrator of Louis Buggert, was one of the class last referred to.

The testimony taken by the commissioners and that subsequently filed in the Interior Department has been furnished to your committee upon application therefor.

The testimony taken before the commissioners was filed in the Interior Department, October 27, 1863, and the additional testimony submitted and filed November 27, 1863.

In the additional testimony so filed is the affidavit of Mr. D. G. Shillock, the attorney of the claimant, who explains the manner in which the schedules were made up. He says:

> When William Buggert, administrator of the estate of Louis Buggert, came to my office and engaged me to prosecute this claim as well as his own, and stating the case of said claim, he told me that he and Louis Buggert, the deceased, had been engaged as partners in farming, each of them having an equal share and interest in farming lands, crops, farming utensils, and stock, and each of them possessing individually some articles of property, consisting of wearing apparel and household goods, and that he and deceased lost most of their partnership property as well as the property that they owned individually by the Sioux Indians. I advised William Buggert, upon (his) statement, to make out two bills of lost property, one for himself and one for the deceased, specifying in each bill the property which they owned individually, respectively, and also to put on his bill, as well as the bill for the deceased, *one-half of the property which they owned in partnership* and lost by the Indians. Some time after this instruction William Buggert again came to my office with two bills or schedules which he told me he had made out according to my instructions, one for himself and one for the deceased. Each of those bills was written in German. From said bills, the schedules and the complaints in this case, as well as in the case of William Buggert, No. 395, were made out.

On March 3, 1868, the Senate passed a resolution directing the Secretary of the Interior to report to the Senate the names of the several claimants for indemnity for depredations by Sioux Indians under act of *February* 16, 1863, whose claims were unadjudicated upon by the com-

missioners. In obedience thereto, the Secretary of the Interior, under date of March 14, 1868, transmitted to the Senate two schedules of such names: Schedule A, embracing seventy-nine claimants, by whom no proof was submitted, and Schedule B, embracing names of twelve claimants, in regard to whose claims the commissioners reported "the hasty submission on insufficient testimony, owing to unavoidable embarrassment, which defect the parties can now supply." In this Schedule B, containing these twelve names, appears the claim of Louis Buggert, deceased, by his administrator, as No. 287, and also the claim of William Buggert, in his own behalf, as No. 395.

Your committee has carefully examined the testimony originally submitted to the commission, and that subsequently filed in the Interior Department, as aforesaid.

From this examination there is no reason, in the opinion of your committee, to doubt the claimant's right to relief; that Louis Buggert was driven from his home by the savages; that he fled with his wife and children to New Ulm for safety; that the danger was so imminent that he was compelled to abandon substantially all his household furniture, crops, stock, &c.; that he lost his life a few days thereafter in the defense of New Ulm. All this is beyond question.

The only question, in the opinion of your committee, about which there is room for debate, is the extent of the loss in the destruction, deportation, and injury to property. The total amount of loss claimed in schedule filed with the commission is $917.47. After a careful examination of all the evidence, your committee are of the opinion that the loss thus sustained was not less than $750; and that claimant may well be allowed that amount. Your committee, therefore, report back said House bill with the recommendation that it be amended by the insertion of said amount and put upon its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1726.

JOSEPH C. IRWIN.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3894.]

The Committee on Claims, having had under consideration the bill (H. R. 3894) for the relief of Joseph C. Irwin, beg leave to report thereon:

It appears from the evidence submitted to your committee that the claimant became one of the sureties on a contract entered into between Lieut. Col. L. C. Easton, chief quartermaster of the Department of the Missouri, and Andrew J. Williams, dated December 8, 1871, for furnishing 628 cavalry horses, of which delivery was, by the terms of said contract, to be made at Fort Leavenworth, Kans., on or before January 29, 1872, and for which claimant was to receive $104.73 per head.

This contract was assigned to claimant, and he proceeded to the purchase of the horses required.

January 30, 1872, he applied for an extension of time of final delivery until April 1, 1872, alleging that by that time he would be able to complete his contract, the performance of which had been greatly retarded by the extreme severity of the season.

This application was refused in the following telegram from the adjutant-general of the Military Division of the Missouri, dated February 16, 1872:

> In consequence of the severity of the winter, and to avoid complaint, you will extend the contract to the 15th of March. If at that time the contractor has not complied with the terms of his contract, the horses can be purchased in the open market at a price not to exceed $185 each.

Upon being advised of this telegram, Irwin sought to be released from the performance of the contract, and to be paid for the horses already furnished, applying to the Secretary of War for a further extension to enable him to fulfill his contract, or that he be relieved from the obligation of his bond.

This application was referred to the Quartermaster-General, and returned by him recommending its reference to General Sheridan, and expressing the opinion that the executive branches of the government had no power to release a bonded contractor from the terms of his agreement.

Upon the reference of the papers to the commanding general of the Military Division of the Missouri, no further extension was approved to him.

On the 16th of May, 1872, Irwin's claim was referred to the chief quartermaster *Department of the Missouri*, for report, together with any evidence *the interested parties might* desire to furnish.

This report constitutes the history of this claim, and has filed with it a very considerable number of affidavits intended to substantiate the claim.

The claimant alleges that, in pursuance of the terms of his contract, he made all due preparations to complete the same, and proceeded with all due diligence to carry out the obligations on his part, but was prevented from doing so for the reason that after he had furnished 103 horses on the contract an epidemic, or disease known as the epizootic, broke out among horses, and became so general and widespread throughout the entire West as to render it impossible to obtain sound horses sufficient to complete and fill his contract within the time specified.

This statement is corroborated by Major Moore, then depot quartermaster at Fort Leavenworth, who states that—

* * * The season of the year in which contractor was required to meet his obligation was an exceptionably severe one. Intense cold and heavy snow storms prevailed the greater portion of the time, making it very difficult to reach farmers in the interior of the country, and next to impossible to bring stock to the railroad stations.

It is a well-remembered fact that the disease to which claimant refers prevailed during the winter of 1871 and 1872, and also that nearly every horse in the Western States was by it temporarily disabled during the period at which this claimant was endeavoring to comply with the terms of his contract.

It is in proof that Irwin, endeavoring to carry out and complete his contract, purchased upward of 400 horses, and that nearly three hundred of these were left upon his hand, for the reason that they had become so reduced as to render them unfit for service.

In this connection William Phillips, an expert horse-buyer, testifies that after he had purchased several small lots, which were rejected, he purchased ten car-loads in Illinois and forwarded them to Fort Leavenworth to be applied on Irwin's contract. The greater part of these being rejected, he notified Irwin that it was useless to make further efforts, but Irwin persisted in attempting to fill the contract.

Claimant alleges that the inspection was unusually rigorous. It is not clearly shown that such was the fact; but while it may not have been *more* rigorous than usual, it is apparent that it was not in any degree relaxed on account of the extreme difficulty and almost impossibility of procuring horses fully up to the usual standard during that severe winter.

William Freeland, a horse-dealer and stable-keeper of Leavenworth testifies:

* * * Have seen at least between two and three hundred horses offered on the contract, and considered them as good or better than the average horses heretofore accepted.

H. C. Irwin swears that he saw at least two hundred and fifty of the horses bought by Irwin and Phillips under this contract, and considered them fully equal to the horses which have heretofore been accepted at Fort Leavenworth.

A. P. Shreve swears that he was present at four or five offerings of horses by Irwin, and inspected his horses at his (Irwin's) stables, which were full, and that they were equal in quality and adaptation to cavalry service to the six hundred horses which he and Moonlight delivered in the fall of 1871 for cavalry service.

These witnesses are corroborated by others, and their testimony clearly shows that severity of season or prevalence of disease did not *cause any* less thorough inspection of the claimant's horses than if they *had been* delivered under ordinary circumstances.

Major Moore, then depot quartermaster at Fort Leavenworth, says in his report that—

* * * The stock presented by him (Irwin) was subjected solely to the customary inspection which has been in vogue in this department for years.

In Irwin's application, made to the Secretary of War, to be released from his contract and to be paid for horses already furnished, he alleges that a conspiracy existed among horse-dealers—bidders whose proposals were rejected at the letting of the contract, dating from the issuance of the order of the commanding general—Department of the Missouri, to purchase horses in open market at a price not to exceed $135; and both Irwin and William Phillips swear that letters were written at Fort Leavenworth to horse-dealers at different points, advising them of the order for purchase of horses in open market, and cautioning them not to sell to Irwin, but hold for higher prices.

While there is no further testimony in reference to the existence of this combination, the fact that such order had been issued six weeks prior to the expiration of the time given claimant for completion of the contract, and in view of the fact also that this order had been made public upon its receipt at Fort Leavenworth, there can be little doubt that a combined action among dealers occurred, intended to defeat claimant in his endeavor to comply with the provisions of his contract, and which he swears was one of the causes of his failure.

Claimant furnishes the sworn statements of W. S. Van Doren, J. P. McManus, C. R. Dawson, Thomas Moonlight, and other credible and reputable citizens of Leavenworth and the vicinity, to the effect that after claimant had retired from the contract the government was paying an average price of $134, in open market, for horses which had been purchased at from $90 to $110 each. He also produces a statement signed by 17 of the leading business men of the same place, who, after indorsing claimant as a citizen of integrity and a responsible man of business, add:

* * * * We are also aware that the only demand of any note in all the country through Missouri and Kansas, for horses of the cavalry grade at that time, was to fill the contract made at Fort Leavenworth, and that in consequence of this, the person who controlled that contract in point of fact controlled the price of cavalry horses. We believe that if the prices afterwards paid at Fort Leavenworth had not been published, but in lieu of such manner of purchase agents had been sent into the market, they could have made selections from all the cavalry horses in that country (ample in numbers) at prices ranging from $75 to $90.

For the causes before stated claimant was unable to fulfill the entire conditions of his contract, but did deliver 103 horses in all, which were accepted. Out of this number he received payment for only 23 head; payment for the remaining 80 being withheld on the ground that the government had sustained damage on account of the non-fulfillment of the contract in a sum amounting to the difference between the cost of the horses at the contract price and the amount paid for them in open market.

In May, 1872, the papers in this claim were referred to the chief quartermaster Department of the Missouri for report, and by the latter to the depot quartermaster at Fort Leavenworth, who, after reciting the history of the claim, says:

I am of opinion that the contract price, $103.73, was too low a one at which to furnish young and active horses such as are required for the cavalry service.

There can be no doubt of this fact; nevertheless I am satisfied that even with that low figure to work on, a faithful completion of the contract was contemplated.

While I am opposed to a contractor being released from his obligation to the government who makes a losing contract, I recommend that in view of the severity of last winter and all the *circumstances* connected with the case, that the contractor be *allowed payment for the horses delivered.*

The attention of General Pope having been officially called to the foregoing report, it was indorsed by him as follows:

I fully agree with that officer in thinking that the contract was taken in good faith, and with the intention of complying with its terms, and that the failure to do so was due to the causes he mentions. Under these circumstances, it is respectfully submitted that as the government received the 80 horses for which payment is asked it would be equitable to pay for them.

JNO. POPE,
Brevet Major-General, Commanding.

The War Department having decided adversely upon claimant's application, he sought relief in the Court of Claims.

The records of the Court of Claims show that claimant's petition was filed in that court June 12, 1874. The government took issue on the merits of the case, and claimant not producing required evidence, the case was dismissed December 22, 1876.

The claimant now seeks relief at the hands of Congress, basing his application upon equitable grounds.

Referring to claimant's petition, Levi Wilson, the inspector who inspected the horses offered under the contract and referred to to receive those rejected, says:

I am personally acquainted with Mr. Irwin and am pretty well acquainted with the facts stated in his petition, and I feel confident they are all true. No more honorable gentleman lives in the State, and what he says may be relied on. I sincerely hope his claim may be allowed and tardy justice done thereby.

Under the circumstances, your committee is of the opinion that the claimant is entitled to relief. To deny it would be a grievous hardship upon claimant; it would make him the victim of the elements and circumstances for which he ought not to be held responsible.

Your committee therefore report back the bill and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1727.

ASBURY DICKINS.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3541.]

The Committee on Claims, to whom was referred the bill (H. R. 3541) for the relief of the heirs of Asbury Dickins, have had the same under consideration, and report that they find the facts correctly stated in a report made by this committee to the Forty-fourth Congress, which report this committee adopt and submit herewith:

That Asbury Dickins, while he was chief clerk of the Treasury Department, during the years 1829 to 1833, inclusive, and afterward while chief clerk of the State Department at various times during the years 1833, 1835, and 1836, was several times appointed by the President, under the eighth section of the act of Congress of May 8, 1792, for short periods, to act as Secretary of the Treasury and as Secretary of State. During these times he performed the duties of both Secretary and chief clerk, and only received the salary of one, and, with one exception, that was the salary of chief clerk. His duties during these times were very responsible and arduous. It was no part of his duty as chief clerk to act as Secretary; neither was there any incompatibility nor any law forbidding his doing so. In some such cases the officer has received both salaries; in others only one. Mr. Dickins first presented his claims in 1849, and the First Auditor of the Treasury, August 11, 1849, examined and adjusted the account, finding due from the United States to Asbury Dickins, $3,976.19, but there was no appropriation out of which it could be paid.

The claim was presented to Congress February 20, 1854, and favorably reported and passed in the Senate February 23, 1854. It was favorably reported in the House, but getting on the private calendar it was defeated by a single objection. At the next session (second session Thirty-third Congress) it was referred to the Court of Claims, At the first session Thirty-fourth Congress the report of the Court of Claims showed a judgment for Mr. Dickins and a bill in his favor for the sum of $5,350.71. The opinion of the court, given at some length, shows clearly that the law was in his favor. The bill was carried back and forth between the two houses, sometimes passed in one, sometimes in the other, till the last session of the Thirty-sixth Congress, when Mr. Dickins died. The state of the country obstructed further action. By Mr. Dickins's will the claim passed to his daughters Maria, Eloise, and Amelia Dickins. In the Fortieth Congress it was revived and has ever since been pending.

Chief Justice Taney, in the case of the United States *vs.* White (district of Maryland), and Justice Story, United States *vs.* Morse (Story's Reports, vol. 3, p. 87), gave decisions which justify in full the claim of the heirs of Mr. Dickins. As we have said, the Court of Claims, in Mr. Dickins's life-time, decided in his favor. And twenty-four years ago the Treasury Department stated the account, allowing him nearly four thousand dollars.

In view of the foregoing facts, the committee report back said bill, and recommend its passage.

O

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1728.

J. P. WRIGHT.

NE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

r. LINDSEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6459.]

he Committee on Claims, to whom was referred the bill (H. R. 4758) for the relief of J. P. Wright, of Lynchburg, Va., have had the same under consideration, and submit the following report:

The bill proposes to pay the claimant the sum "of $3,986.25 for the ublication, in the Lynchburg Press, of the proposals of the Post-Office epartment for carrying the United States mails in Virginia from July 1875, to July 1, 1877, for six consecutive weeks."

The Lynchburg Press, published by the claimant, was designated by e Clerk of the House of Representatives, Mr. McPherson, as one of the ewspapers in which the treaties and laws were to be advertised, and e prices to be paid were also furnished. It appears that the claimant d been informed by the Postmaster-General, through Hon. James H. latt, a Representative from the State of Virginia, that if the Press ould be designated by the Clerk of the House of Representatives he ould order the proposals for carrying the mails in Virginia to be pub- hed in that paper. Under this assurance, and without any order for at purpose, he proceeded to publish the proposals for the period desig- ted, and at the price designated by the Clerk the price would amount the sum claimed. We think it was grave negligence in the claimant proceed to publish the proposals without first getting an official order r that purpose; but it appears from the statements of the Hon. Messrs. latt and Pelham, members of Congress at the time from Virginia, and so from the statements of the First Assistant Postmaster-General, Mr. arshall, and Mr. W. H. Willard, that there was some ground for the isapprehension under which he acted; and it further appears from e statements of Messrs. Thomas, Platt, Whitehead, Bowen, Harris, and unter, all members of the Forty-third Congress, and of Mr. J. F. Wilson, stmaster at Lynchburg, George H. Burch, mayor of that city, and eorge W. Henderlite, collector of internal revenue, that it was for the blic interest that the proposals for bids to carry the mails in Virginia ould be published in the Press, which had a large circulation in that ction of the State. Mr. Pelham says that he had no doubt that the blication of the mail-lettings in that paper had secured competition nong bidders along the several routes, which had saved the depart- ent many times the amount of the bill. This, of course, can be only eculation, but in view of these facts the committee think it fair and st that Mr. Wright *should be* secured against actual loss, and that

while he is not entitled, under the circumstances, to any profit, he should be paid the actual cost of the publication. The matter has been submitted to the Public Printer for an estimate of the actual cost, and the following is his estimate:

OFFICE OF PUBLIC PRINTER,
Washington, February 11, 1879.

Estimate of cost of printing one advertisement, twenty-eight columns, six insertions, in a weekly newspaper published at Lynchburg, Va.

Cost of composition, 115,360 ems, at 50 cents	$576 80
Cost of paper, at $2.88 per ream	118 08
Cost of press-work	60 00
Cost of mailing to each post-office in the State of Virginia, for each weekly issue (estimated)	100 00
Cost of five additional insertions, at 30 cents per square (usual price 60 cents per square), 728 squares	1,092 20
Total	1,947 08

The above would be but a fair remuneration to Mr. Wright.

JNO. D. DEFREES,
Public Printer.

This is about one-half of the sum claimed, and we report back the accompanying substitute for the bill, substituting the sum of $1,947.08 for $3,986.25, and recommend that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1729.

JOHN DIXON.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Mr. P. B. THOMPSON, Jr., from the Committee on War Claims, submitted the following

REPORT:

[To accompany bill H. R. 4211.]

The Committee on War Claims, to whom was referred the bill (H. R. 4211) for the relief of John Dixon, respectfully report:

The records filed show him indebted in the sum from which he asks the officers be allowed to release him. There is no reason suggested in the record why such relief should be granted. No affidavits or other proof is filed showing he applied the money to the use of the government, or that it was lost, stolen, or applied in any way save to his own use. Unless the petitioner can, upon his own oath, account for the loss of the money in some way consistent with his duties as an officer, he is not entitled to consideration. The bill is therefore reported adversely.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1730.

RENTS PAID BY UNITED STATES FOR BUILDINGS, ETC.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Mr. DEUSTER, from the Committee on Expenditures on the Public Buildings, submitted the following

REPORT:

The Committee on Expenditures on the Public Buildings, to whom was referred the House resolution directing us to "inquire into and report what rents the United States Government is paying for buildings, or parts of buildings, and grounds; and whether the price paid or agreed to be is paid reasonable; the names of the owners and renter of each parcel of ground or building or part of building, and the assessed and salable value of each piece of property so rented; and whether it is the interest of the United States Government to continue to pay such rents, or erect suitable buildings demanded by the public needs," having had the same under consideration, beg leave to submit the following report:

In accordance with the requirements of the resolution, your committee addressed communications to the heads of the several departments calling for official information on the subject. After some necessary delays replies were received from the Treasury, Post-Office, Navy, Interior, and Attorney-General's Departments, which are hereto appended and made a part of this report.

The replies from the Treasury and Post-Office Departments are as full and complete as could be made, though the "real and salable values of the premises could not be ascertained. The amount of rent paid in remote places by the Interior, War, and Navy Departments has not been furnished, for the reason that the data were not at hand, and it will require much time to gather the same. These departments have been requested to report such information as soon as obtained.

The aggregate amount of rent paid by the Post-Office Department is shown to be $285,375 per annum. In many places the rent paid is high compared to the service; in others the price paid by the government for the use of buildings is merely nominal; owners of the rented property exacting no rent, but relying upon the business the location of the post-offices carry in such places.

The amount paid by the Treasury Department is $319,723 per annum for rent of customs offices, internal-revenue offices, light-house establishments, revenue marine, and other offices under control of this department. Some of the items furnished show the rent paid to be very exorbitant and unreasonable. Notably so are the prices paid for the "Richards property" and a part of the "Butler mansion," on New Jersey avenue, in this city, rented for the use of the Coast Survey Service; the former building costing annually $14,000 rent; the latter, which embraces a small part of the rear of the Butler mansion, costing $6,000 per

annum. These and other items are unreasonably high, and might be greatly reduced without detriment to the public service if the furnishing of the premises required were open to fair competition.

From a statement furnished by the War Department during the Forty-fifth Congress, it appears that that department expends annually for rent of buildings and grounds the sum of $544,459; of this amount $112,050 was then paid in this city.

The Secretary of the Interior makes return of $32,700 paid for rent of buildings required here in Washington for his department. Said amount is made up as follows:

The "Jessup building (Pension Office), corner Twelfth street and Pennsylvania avenue, for which $20,000 rent is paid for the upper stories. This rent is equivalent to a fraction over 13 per cent. of the assessed or salable value of the property; "Wright property," corner of G and Eighth streets, costs $7,200, which is 17 per cent of "assessed" value of the building; Johnson property, northwest corner G and Eighth streets, costs $1,500, or over 13 per cent. of its assessed value; "Barnard" building, corner Thirteenth and Pennsylvania avenue, costs $4,000, which is equivalent to 6¼ per cent. of the assessed value of the property.

The Secretary of this (Interior) department, in answer to the request of the committee for his official statement of rents paid, replies:

> The length of time required to obtain similar information of all the buildings rented by this department throughout the country would be so great (perhaps several months), that it is deemed inexpedient to undertake it, unless you regard it of great importance, in which event you will please advise me.

The Department of Justice in 1878 reported annual rents paid amounting to $86,905; and this amount very nearly approximates what is required at the present time.

The Navy Department reported in 1878 $13,400 throughout the country, and now pays for use of buildings in this city about $2,000 per annum for rent.

The Department of Agriculture pays no rent whatever.

The resolution calls for information in regard to the "assessed and salable" value of the rented premises, and as such data cannot be given without sending agents all over the country to assess and estimate the real value of the property, it would be almost an endless undertaking to obtain full and accurate information to the extent called for.

Your committee, therefore, having investigated this subject as far as possible at this time, submit these views and figures. We add that, in the opinion of your committee, it is an unwise policy on the part of the government to pay rents from year to year that are equivalent to 5, 6, 10, and even as high as 20 per cent. of the value of the property rented.

The total amount annually expended for rented premises in all the departments exceeds one and a quarter millions of dollars; a sum equivalent to 4 per cent. interest on more than thirty-one millions of dollars. This amount, judiciously expended, would construct several hundred handsome public buildings; enough to supply the needs of the public service for half a century to come, and put one in every important city in the Union not already supplied.

Of course much of this aggregate amount is made up of small sums required for many unimportant places, where rent is paid for the use of rooms and offices for the customs service, Internal Revenue, and Post-Office Departments, in towns and villages throughout the States and Territories. But that the government is needlessly spending money for rent cannot be questioned or denied.

Your committee would further suggest that the inconvenience, trouble,

and expense that would follow frequent or sudden removals, to some extent places the government in the power of the owners of the rented premises, and endangers the safety of the public records.

Your committee would also recommend that a resolution be adopted requiring the heads of departments and disbursing officers of the government to adopt some system of rules and regulations in regard to renting buildings and offices that will open the door to competition, and thus avoid the payment of exorbitant and unreasonable rates.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., March 4, 1880.

SIR: Referring to your letter addressed to this department under date of January 10, 1880, inclosing copy of resolution adopted by the House of Representatives authorizing your committee to inquire into and report what rents the United States Government is paying for buildings or parts of buildings, or for grounds, &c., and to department's letter addressed to you under date of January 27, 1880, I have now the honor to inclose herewith, in response to your request, a statement showing the grounds, buildings, and rooms rented or leased by the Treasury Department.

Very respectfully,

JOHN B. HAWLEY,
Acting Secretary.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on the Public Buildings,
House of Representatives, Washington, D. C.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, February 9, 1880.

SIR: Referring to your letter of the 4th instant, addressed to the Postmaster-General, and by him referred to this office on the 7th instant, asking for a "statement showing the amount of rents annually paid for the use of buildings, &c.," I have the honor to state that it is not possible to give the value, either real or assessed, of any of these buildings, nor is it possible in all cases to give the name of the owner; the receipts in many cases being signed by agents.

A statement showing the locality and the annual allowance for rent will be prepared at once, if such will suit your purpose.

I am, respectfully,

F. B. LILLEY,
Acting Auditor.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on the Public Buildings.

POST-OFFICE DEPARTMENT,
Washington, D. C., March 26, 1880.

SIR: In response to your request of March 15, I have the honor to transmit herewith a statement showing the amounts paid for rent of post-offices and the names of the owners of the property. The value of the rented premises, also called for by your letter, it is impossible to ascertain without a personal investigation in each case by an agent of this department, which cannot be made with the present limited appropriation for special agents.

Very respectfully,

D. M. KEY,
Postmaster-General.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on the Public Buildings,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, February 18, 1880.

SIR: In compliance with your request of the 4th instant, I have the honor to transmit herewith a statement showing the location of buildings occupied by the several bureaus of this department in this city, the owners' names, the amount of rent per annum, and the *assessed* valuation of each building, as furnished by the assessor of the District of Columbia.

The length of time required to obtain similar information of all the buildings rented by this department throughout the country would be so great (perhaps several months), that it is deemed inexpedient to undertake it unless you regard it of great importance, in which event you will please advise me.

Very respectfully, &c.,

C. SCHURZ,
Secretary.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on the Public Buildings and Grounds,
United States House of Representatives.

DEPARTMENT OF AGRICULTURE,
Wahington, D. C., February 7, 1880.

SIR: In reply to your note of the 4th instant, requesting an official statement of the amount of rent annually paid for the use of buildings or grounds for this department, I have the honor to state that no rents of any kind, either for buildings or grounds, are paid by or on account of this department.

Respectfully,

E. A. CARMAN,
Acting Commissioner.

Hon. P. V. DEUSTER,
Chairman of Committee on Expenditures on the Public Buildings,
House of Representatives.

WAR DEPARTMENT,
Washington City, June 14, 1880.

SIR: In compliance with the request conveyed by your letter of February 4 last, I have the honor to transmit herewith a statement showing the number of buildings, rooms, and lots of ground rented by the War Department, their location, for what purpose used, the names of the respective owners thereof, the assessed and real value of the property, and the amount of rent paid therefor.

The delay in the transmission of this statement resulted from the fact that much of the data embraced therein had to be collected from remote points, and had in some instances to be returned for further and more specific information.

Very respectfully, your obedient servant,

ALEX. RAMSEY,
Secretary of War.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on the Public Buildings,
House of Representatives.

P. S.—As the inclosed statement contains information valuable for the use of this department, I respectfully ask that it may be printed.

respective owners thereof, the assessed and real value of the property, and the amount of rent paid therefor.

Location.	Number of buildings.	Number of rooms.	Lots of ground.	For what purpose used.	Owner.	Rate per month.	Street or designation.	Portions occupied.	Assessed value.	Real value.
QUARTERMASTER'S DEPARTMENT.										
Saint Louis, Mo	1			Commissary warehouse.	L. Levering, agent	$50 00	203 S. Lever st		$5,100	$8,000
	1			Medical department	J. E. Kaine	200 00	612, &c., N. 2d st		17,350	30,000
	1			Quartermaster storehouse.	Conn & McRee	15 00	317 Elm st	Ground floor	525	750
			1	Corral	S. V. Palrin & Bro	25 00	416 st		6,710	13,000
	1			Offices	D. Nicholson	100 00	29 S. 4th st	2d and 3d floors	16,000	22,600
	1			do	J. Knalp	50 00	112 S. 4th st	2d floor	6,160	13,333
		1		Office	Janeway & Moffett	20 00	2923 Washington avenue		10,000	20,000
Atlanta, Ga			1	Site of barracks	Thomas Alexander estate	333 33			25,000	25,000
Baltimore, Md	1			Offices, &c	Ernest E. Gill	83 33			12,264	15,000
	1			Quarters superintendent national cemetery.	J. E. Bell	15 00			3,065	3,500
Chicago, Ill	1			Stable	A. Root	90 00	41 and 43 14th st		5,000	10,000
	1			Offices and storehouse.	C. D. Ely	125 00	3 E. Washington st		3,080	15,000
	1			do	G. M. High	35 00	4 E. Washington st	A part	3,080	1,400
	1			Offices	Commercial Mutual Life Insurance Company.	483 33		3d floor and 2 rooms 4th floor.	600,000	750,000
		1		do	do	25 00				
		3		do	do	76 33				
	1			Storehouse	do	58 33		Ground floor		
		1		Quarters for hospital steward.	W. Shilo	12 00	625 York st		(*)	
San Francisco, Cal	1			Offices, &c	William Walkeley	765 00		NOTE.—Other property recently rented in lieu thereof from A. D. Sharon, at $10,000 per annum.		100,000
	1			Stable	E. C. Palmer	30 00				
		1		Office	R. Ives	30 00				
Fort Worth, Tex		1		do	J. J. Byrne	24 00			3,000	6,000
Santa Fé, N. Mex		3		Quarters non-commissioned staff.	Z. Staab & Bro	20 00			(*)	2,000
		1		Quarters veterinary surgeon.	E. Miller	10 00			(*)	1,000

*Not known.

Statement showing the number of buildings, rooms, and grounds rented by the War Department, &c.—Continued.

Location.	Number of buildings.	Number of rooms.	Lots of ground.	For what purpose used.	Owner.	Rate per month.	Street or designation.	Portions occupied.	Assessed value.	Real value.
QUARTERMASTER'S DEPARTMENT—Cont'd.										
Santa Fé, N. Mex	.....	1	.....	Quarters chief musician.	V. Garcia	$10 00	.....	.....	(*)	$1,000
	.....	1	.....	Quarters commissary-sergeant.	V. Chadez	10 00	.....	.....	(*)	1,000
San Antonio, Tex	.....	4	.....	Quarters hospital steward, &c.	M. Pavoley	12 00	.....	.....	$1,300	2,000
	1	.....	.....	Offices, &c	G. M. Maverick	350 00	.....	.....	21,000	35,000
	1	.....	.....	Stable	do	50 00	.....	.....	2,000	3,000
Saint Paul, Minn	1	.....	.....	Offices	J. L. Merriam	300 00	.....	.....	28,600	45,000
	1	.....	.....	Office	do	40 00	.....	.....		
	1	.....	.....	Stable	D. M. Robbins	70 00	.....	.....	3,200	11,000
	.....	2	.....	Offices	E. H. Judson	35 00	.....	.....	8,200	15,000
	1	.....	.....	Storehouse	do	50 00	.....	.....	(†)	.....
	.....	1	.....	Office	S. Winker	12 50	.....	.....	5,500	12,500
	.....	1	.....	Quarters, lodgings	J. McGiven	10 00	.....	.....	(‡)	.....
	.....	1	.....	do	J. Moudy	3 00	.....	.....	3,500	11,000
	.....	1	.....	do	Kate Wahling	12 00	.....	.....	(‡)	.....
	.....	1	.....	do	A. Peyer	6 00	.....	.....	2,800	5,500
	.....	1	.....	do	A. Gosling	12 00	.....	.....	1,200	3,000
New Orleans, La	.....	1	.....	Office	J. H. O'Connor	75 00	159 Camp st	.....	7,000	12,000
	1	.....	.....	Storerooms	J. Henisbooms	166 67	182 and 192 Magazine st	.....	10,000	25,000
Helena, Mont	1	.....	.....	Office, &c	M. Carroll	40 00	.....	.....	1,500	2,500
	.....	1	.....	Office	E. W. Knight	25 00	.....	.....	1,500	2,000
Helena, M. T	.....	1	.....	Office	Fisk Brothers	25 00	.....	.....	1,350	2,000
	1	.....	.....	Stable, &c	J. B. Porter	25 00	.....	.....	2,000	3,500
	.....	1	.....	Office	C. A. Broadwater	25 00	.....	.....	1,500	2,000
Fort Davis, Tex	.....	.....	1	Site of post	J. H. James	75 00	.....	.....	10,000	§98,000
Fort Clark, Tex	.....	.....	1	do	M. A. Maverick	200 00	.....	.....	15,468	§285,000
Fort Concho, Tex	.....	.....	1	do	Adams & Wickes	94 50	.....	.....	7,110	2,025
Fort Stockton, Tex	.....	.....	1	do	Jas. Gallagher	106 66	.....	.....	4,500	§90,500
Fort Duncan, Tex	.....	.....	1	do	J. Twahig	200 00	.....	.....	10,000	10,000
Fort McKavett, Tex	.....	.....	1	do	A. O. Cooley	100 09	.....	.....	10,000	5,000
San Diego, Tex	.....	.....	1	do	Richard King	1 00	.....	.....	80	160
Fort Griffin, Tex	.....	.....	1	do	T. E. Jackson	7 50	.....	Part of site	3,000	301
	.....	.....	1	do	W. G. Veal	20 83	.....	Part of site	(*)	542
	.....	.....	1	do	D. M. Dowell	8 33	.....	Part of site	(*)	467
Portland, Oreg	.....	2	.....	Office		40 00	.....	.....	3,300	8,600
	.....	1	.....	do		25 00	.....	.....	3,000	6,300
	.....	1	.....	Storehouse		50 00	.....	.....		

				dent national cemetery.						
	1	.....	.....	Office	S. S. Cavin, agent	81 31	1139 Girard st	.....	12,600	20,000
	1	.....	.....	Stable	G. H. Stewart	30 00	248 Dean st	.....	3,000	6,000
New York City	1	.....	.....	Office, &c	.....	1,083 33	Green and Houston sts.	.....	175,000	250,000
	1	.....	.....	Stable	.....	100 00	143 and 145 W. 33d st	.....	14,000	32,000
Cold Spring, N. Y	.....	1	.....	Office	.....	10 00	.....	.....	(*)	1,000
Yankton, Dak	.....	1	.....	.....do	F. J. Dewitt	25 00	.....	.....	5,800	7,733
	.....	1	.....	.....do	N. Edmonds	25 00	.....	.....	6,000	8,000
	.....	1	.....	.....do	J. C. McVaun	25 00	.....	.....	4,200	5,000
	1	.....	.....	Warehouse	A. J. Faulk	50 00	.....	.....	3,000	4,000
Buffalo, N. Y	1	.....	.....	Storehouse, &c	L. C. Winne	45 00	.....	.....	15,475	16,000
Detroit, Mich	.....	1	.....	Office	H. Moffett	18 75	.....	.....	(‖)	.....
Ogden, Utah	.....	1	.....	.....do	W. D. Williams	17 00	.....	.....	(*)	20,000
Leavenworth, Kans	1	.....	.....	Offices	Lyman Scott	30 75	.....	2d and 3d stories	4,500	25,000
David's Island, N. Y	1	.....	.....	Stable	P. R. Underhill	8 00	.....	Opposite the island	(*)	1,800
Washington, D. C	1	.....	.....	Branch Adjutant-General's Office.	Jas. A. Shorter	100 00	612 17th st	.....	6,020	7,525
	1	.....	.....	.....do	J. H. Clark	83 33	616 17th st	.....	5,872	7,340
	1	.....	.....	.....do	.....do	83 33	618 17th st	.....	5,872	7,340
	1	.....	.....	.....do	.....do	175 00	620 17th st	.....	6,873	8,591
	1	.....	.....	.....do	.....do	216 66	1704 G st	.....	9,070	11,337
	1	.....	.....	.....do	Wm. Thompson	225 00	720 17th st	.....	8,881	11,101
	2	.....	.....	.....do	Phillips & Cox	250 00	1707 and 1709 N. Y. ave	.....	14,684	18,355
	1	.....	.....	.....do	Margaret Aylmer	90 00	17th st. and Pa. ave	2d and 3d floors	14,933	18,666
	2	.....	.....	Chief Signal-Officer	J. Redfern	158 33	1719 and 1721 G st	.....	13,888	17,360
	2	.....	.....	.....do	L. M. Saunders	40 00	1719 and 1721 G st	2d floor	17,158	21,447
	1	.....	.....	Office (Engineer Department.)	Wm. Tracey	133 33	1813 F st	.....	11,625	14,531
	1	.....	.....	.....do	S. Callaghan	80 00	616 18th st	.....	5,384	6,730
	1	.....	.....	Office (Medical Department.)	J. H. Collins	83 33	1733 G st	.....	7,698	9,622
	.....	.....	1	Corral	J. M. Young	125 00	In square No. 232	.....	7,681	9,601
	.....	.....	2	Depot commissary buildings.	Wm. Pettibone, agent	13 41	In square No. 231	.....	1,339	1,673
	.....	.....	1	Stable	A. Hyde	20 00	In square No. 167	Not now rented by United States.	.....	.....
	.....	.....	1	Stable stalls	Keyes & Co	10 00	14th st., bet. D and E	.....	.....	.....
Boston, Mass	.....	8	.....	Offices, &c	A. M. Whiting	75 00	.....	.....	50,000	55,000
Total	47	49	17	.....	.....	8,495 50	.....	.....	1,316,395	2,352,020

* Not known. † Included in preceding assessment. ‡ No longer hired by United States. ‖ Cannot be given. § Covers value of buildings erected on the land by the United States

Statement showing the number of buildings, rooms, and grounds rented by the War Department, &c.—Continued.

RECAPITULATION—QUARTERMASTER'S DEPARTMENT.

47 buildings rented at an annual rent of	$76,060 32
49 rooms rented at an annual rent of	9,798 96
17 lots of ground rented at an annual rent of	16,086 72
Total	101,946 00
Assessed value	1,316,395
Real value	2,352,020

NOTE.—For the rent of the Quartermaster-General's Office, corner Pennsylvania avenue and Fifteenth street, Congress makes an annual appropriation of $10,000.

Location.	Number of buildings.	Number of rooms.	Lots of ground.	For what purpose used.	Owner.	Rate per month.	Street or designation.	Portions occupied.	Assessed value.*	Real value.*
ENGINEER DEPARTMENT.										
Washington, D. C	1			Offices, &c	Mrs. C. R. Dulany	$40 00	1907 Pennsylvania ave		$7,800	$5,000
Philadelphia, Pa				do	I. George Klemin	50 00	1619 Chestnut st	Part of building	23,000	23,000
Norfolk, Va	1			do	W. H. Talbot	40 00			5,500	7,000
New Berne, N. C		2		do	J. L. Watkins	15 00			1,750	2,000
Washington, N. C		1		do	German Bernard	6 00			2,500	2,500
Saint Louis, Mo		6		do	Tyler estate	100 00	404 Market st		152,600	200,000
Portland, Me		2		do	Ocean Insurance Company.	10 41½	Exchange and Milk sts		30,000	50,000
Cincinnati, Ohio		3		do	Enterprise Insurance Company.	29 16½	82 West 3d st		108,000	120,000
Detroit, Mich				do	D. C. Whitwood	40 00	26 Washington ave	One-half of building	8,000	11,000
	1			do	William Hull	100 00			12,150	12,150
Erie, Pa		2		do	W. F. Rindernecht	12 00	5th and State sts		11,500	20,000
Nashville, Tenn		3		do	C. L. Lewis	25 00			40,000	60,000
Portland, Me		4		do	A. W. H. Clapp	29 16½	453½ Congress st		19,000	25,000
Boston, Mass		2		do	Mrs. Lydia A. Adams	30 00	26 Pemberton Square		25,000	25,000 ω 30,000
New London, Conn				do	R. A. Manwaring	40 00	State st	One half building	5,000	8,509
		1		Store-room for boats near dock.	Jonathan Starr	4 00			4,500	7,000
Mobile, Ala		6		Offices, &c	A. & B. Mory	25 00	Commerce and Dauphin sts.		25,000	50,000
Milwaukee, Wis				do	J. Siddel	40 00	427 Milwaukee st	Part of building	30,000 (†)	40,000 50
Two Rivers, Wis	1			Boat-house	Two Rivers Manufacturing Company.	41½				

Boston, Mass		2		do	Richard Codman	25 00	13 Exchange Place		100,000	125,000	
New York City		2 and ext'n.		do	Estate of Mrs. A. C. Cannon.	66 66⅔	7 Waverly Place		55,000	42,000	
Milwaukee, Wis		8		do	W. W. Coleman	66 66⅔	433 Broadway		20,000	30,000	
Appleton, Wis		1		do	George Kreiss	8 33⅓			4,500	5,500	
Indianapolis, Ind		4		do	Van Vorhis & Gaston	35 00	New York and Delaware sts.		22,500	45,000	
Saint Paul, Minn		6		do	William Dawson	60 00			25,000	36,000	
Baltimore, Md				do	E. G. Perine	64 00	70 Saratoga st	Part of building	8,000	12,000	
Richmond, Va		3		do	John B. Davis	25 00	Main and 13th sts		30,000	40,000	
Smithville, N. C	1			do	S. L. Fremont	20 00			1,500	3,000	
Charleston, W. Va				do	John Anderson	20 83⅓		Part of building	6,900	12,492	
Kanawha River			1	Lock 3	J. G. W. Tompkins	8 33⅓		1 acre	37	250	
			1	Dam 3	Central Land Company	5 00		3 11/100 acres	182.70	787.50	
			1	Dam 4	E. & A. J. Richards	5 00		7½ acres	330	1,200	
Rock Island, Ill		1		Office	P. Frees & Co	65 00			10,000	15,000	
	1			Barn	J. H. Wilson	8 00			200	1,000	
					Milo Lee	5 00		Part warehouse	1,350	1,500	
			Part 1		B. Davenport	5 00			710	3,000	
Cleveland, Ohio					W. C. Scofield	40 00	104½ Saint Clair st	Part of building	16,050	40,000	
Saint Louis, Mo	1			Offices	L. M. Hellman	100 00	1351 Washington ave		8,000	14,000	
Galveston, Tex		2		do	William Hendley & Co	30 00			40,000	50,000	
Bolivar Point, Tex			1		C. B. Adams	16 66⅔		5½ acres	8.25	30	
Buffalo, N. Y	1				Mrs. Fanny H. Rossell	45 00	120 Pearl st		6,760	5,500	
Oswego, N. Y					Estate of F. T. Carrington.	33 33⅓		Part of building	‡13,000	10,000	
Chicago, Ill		2		Offices	Connecticut Mutual Life Insurance Company.	25 00	Honori Building		250,000	750,000	
Astoria, N. Y			1		S. B. Halsey	41 66⅔	Hallet's Point		2,000	8,000	
Albany, N. Y				Offices	Van Hensen & Charles	25 00	Broadway	Part of building	46,000	80,000	
San Francisco, Cal					John M. Byrne	115 00	533 Kearney st	do	49,500	60,000	
New Orleans, La	1			Offices	R. R. Hunt	175 00	23 South Rampart st		6,000	12,500	
Algiers, La					Brady & McLellan	30 00		Wharf			
Memphis, Tenn		5		Offices	J. F. Frank & Co	68 33⅓			50,000	100,000	
		1		do	Hugh Nott	15 00			1,500	2,000	
Vicksburg, Miss		1		do	John A. Klein	5 00			10,000	10,000	
Delta Point, La			1		Morey & Stubbs	8 33⅓	Land along river front		150	600	
Chattanooga, Tenn		4		Offices	Estate of W. O. Rockwood.	50 00			7,000	10,500	
Nashville, Tenn		3		do	C. L. Lewis	25 00			40,000	60,000	
Rome, Ga		1		do	Alfred Shorter	7 00			20,000	20,000	
Portland, Oreg					H. W. Corbett	25 00		Part of building	27,000		
	1			Storehouse	T. A. Davis	4 00				1,200	
Keokuk, Iowa	1			Offices	James E. Burke	20 00			1,200	2,000	
	1			Stable	John Burns	6 25			500	800	
Newport, R. I					Heirs of D. T. Swinburne, deceased.	37 50	Thames and Mary sts	Part of building	10,822	25,000	

* The assessed and real values as given in these columns are generally of the entire property, portions only of which are rented and paid for. † Not assessed.
‡ This includes adjoining building and wharves.

Statement showing the number of buildings, rooms, and grounds rented by the War Department, &c.—Continued.

Location.	Number of buildings.	Number of rooms.	Lots of ground.	For what purpose used.	Owner.	Rate per month.	Street or designation.	Portions occupied.	Assessed value.*	Real value.*
ENGINEER DEPARTMENT—Continued.										
Hartford, Conn					Hartford Trust Company.	$16 66⅔	Main st. and Central Row.	Part of building	$175,000	$250,000
Detroit, Mich					Hugh Moffat	50 00		do	290,000	350,000
Grand Haven, Mich		2				7 00			4,500	15,000
SIGNAL SERVICE.										
Alpena, Mich		1		Office	Bolton & McRee	12 50			8,000	14,000
Atlanta, Ga		1		do	J. W. Culpepper, agent	18 00			200,000	135,000
Atlantic City, N. J		1		do	W. B. Ginnodo	16 66⅔			1,000	2,500
	1			Stable	do	4 00			100	300
Augusta, Ga		1		Office	E. Ober & Sons	12 50			15,000	20,000
Baltimore, Md		1		do	Baltimore Fire Insurance Company.	18 00			41,501	60,000
Bangor, Me		1		do	J. P. Bass	8 00			9,000	9,000
Boise City, Idaho		1		do	Eastman Bros	30 00			2,000	(†)
Boston, Mass		1		do	Equitable Life Assurance Company.	29 16⅔			651,000	1,000,000
Brockenridge, Minn		1		do	D. W. Smith	15 00			550	1,400
Buffalo, N. Y		1		do	Estate of D. C. Weed	18 00			60,000	70,000
Burlington, Iowa		1		do	Luke Palmer	8 00			2,200	6,500
Burlington, Vt		1		do	J. P. Howard	15 00			100,000	125,000
Cape Henry, Va		1		do	A. A. McCullough	15 00			(‡)	2,000
Cape May, N. J		1		do	T. F. Townsend	18 00			2,000	3,500
Cedar Keys, Fla		1		do	C. B. Rogers	10 00				9,000
Charleston, S. C		1		do	Carolina Savings Bank	10 00			20,000	15,000
Charlotte, N. C		1		do	Davidson & Springs	5 00			7,500	13,000
Chattanooga, Tenn		1		do	Hamilton County	8 33⅓			(§)	70,000
Cheyenne, Wyo		1		do	Asa C. Dobbins	15 00			750	1,000
Chicago, Ill		1		do	Samuel A. Croger	31 25			91,142	300,000
Cincinnati, Ohio		1		do	Estate of S. N. Pike	25 00			331,040	331,040
Cleveland, Ohio		1		do	H. B. & M. P. Payne	20 00			78,750	135,000
Colorado Springs, Colo		1		do	E. H. Van Orden	10 50			2,200	4,000
	1			do	Edward Copley	5 00	Lake House		1,500	3,300
Columbus, Ohio		1		do	P. W. Huntington	15 00			15,240	30,000
Corsicana, Tex		1		do	C. H. Allyn & Co	12 50			8,000	9,000
Davenport, Iowa		1		do	First National Bank	15 00			13,650	25,000
Denver, Colo		1		do	Knox & Currier	16 00			12,000	25,000
Des Moines, Iowa		1		do	Geo. D. McCain	7 50			8,000	16,000

Detroit, Mich		1		do	C. H. Buhl	22 00			61,000	130,900
Dodge City, Kans		1		do	C. H. Schulz	15 00			950	1,500
Dubuque, Iowa		1		do	Eliz. A. Sullivan	15 00			20,000	25,000
Duluth, Minn		1		do	C. H. Graves, agent	10 00			2,421	10,000
Erie, Pa		1		do	W. F. Rindernicht	17 50			14,500	20,000
Escanba, Mich		1		do	S. Adler	15 00			1,600	5,000
Grand Haven, Mich		1		do	D. Cutler	16 66⅔			53,000	75,000
Indianapolis, Ind		1		do	J. D. Condit	10 00			23,000	30,000
Indianola, Tex		1		do	D. Schultz	15 00			2,000	3,000
Jacksonville, Fla		1		do	Com. F. S. and Trust Co	12 00			15,000	40,000
Keokuk, Iowa		1		do	State National Bank	10 00			6,000	10,000
Key West, Fla		1		do	William Curry, agent	25 00			8,000	16,000
La Crosse, Wis		1		do	Mous. Anderson	10 00			30,000	75,000
Leavenworth, Kans		1		do	A. F. Anderson	14 00			4,000	8,000
Little Rock, Ark		1		do	Mrs. Mary Stoddard	16 50			18,000	20,000
Logansport, Ind		1		do	W. H. Snider	10 00			7,000	12,000
Los Angeles, Cal		1		do	C. Duncommon	15 00			25,000	40,000
Louisville, Ky		1		do	Courier-Journal Co'y	16 66⅔			140,000	450,000
Lynchburg, Va		1		do	First National Bank	12 50			13,000	20,000
Madison, Wis		1		do	Estate Timothy Brown	10 00			32,000	35,000
Marquette, Mich		1		do	Charles P. Adams	15 00			3,000	25,000
Memphis, Tenn		1		do	Guy & McClellan	18 00			38,000	100,000
Milwaukee, Wis		1		do	Alexander Mitchell	20 83⅓			175,000	350,000
Mobile, Ala		1		do	Estate Thomas Manser	18 00			8,000	10,000
Montgomery, Ala		1		do	Matthew Stenna	18 00			7,500	7,500
Nashville, Tenn		1		do	State Insurance Co'y	14 58⅓			10,000	15,000
New Haven, Conn		1		do	T. H. Russell	12 50			100,000	75,000
New River, N. C		1		do	E. W. Ward	6 00			4,500	4,500
	1			Stable	do	1 50			450	450
Norfolk, Va		1		Office	Burruss, Son & Co	15 00			30,000	40,000
North Platte, Nebr		1		do	Lincoln County	16 66⅔			(§)	2,000
Olympia, Wash		1		do	Charles Grainger	18 00			2,000	3,600
Oswego, N. Y		1		do	Estate of A. T. Grant	12 50			24,000	30,000
Pembina, Dak		1		do	C. D. Stisug	10 00			50	100
Pensacola, Fla		1		do	John M. Pfeiffer	18 00			3,500	7,000
Philadelphia, Pa		1		do	Chamber of Commerce	20 83⅓			120,000	224,000
Pioche, Nev		1		do	D. Wilkin	18 00			400	200
Pittsburgh, Pa		1		do	First National Bank	20 00			145,000	225,000
Portland, Oreg		1		do	Oregon and Washington Merchants' Savings Bank, limited.	10 00			10,300	19,300
Red Bluff, Cal		1		do	C. G. Crambell	18 00			6,000	23,000
Rochester, N. Y		1		do	D. W. Powers	16 66⅔			650,000	1,000,000
Roseburg, Oreg		1		do	Philip De Souzer	15 00			1,800	3,000
Sacramento, Cal		1		do	F. W. Fratt	15 00			26,200	36,000
Salt Lake City, Utah		1		do	Nicholas Groesbeck	20 00			75,000	175,000
Sandusky, Ohio		1		do	W. T. and O. K. West	20 83⅓			36,000	100,000
San Francisco, Cal		1		do	Merchants' Exchange Association.	20 00			300,000	(‖)
Savannah, Ga		1		do	Mrs. Isabella Waples	16 66⅔			61,000	109,000

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Statement showing the number of buildings, rooms, and grounds rented by the War Department, &c.—Continued.

Location.	Number of buildings.	Number of rooms.	Lots of ground.	For what purpose used.	Owner.	Rate per month.	Street or designation.	Portions occupied.	Assessed value.	Real value.
Shreveport, La		1		Office	D. B. Martin	$12 00			$4, 500	$7, 000
Sloop Point, N. C		1		do	D. MacMillan	5 00			300	350
Smithville, N. C		1		do	W. J. Potter	17 00			1, 000	1, 000
Springfield, Mass		1		do	Tilly Haynes	16 66⅔			55, 000	75, 000
Saint Louis, Mo		1		do	L. E. Alexander, receiver.	25 00			250, 000	350, 000
Saint Paul, Minn		1		do	D. W. Ingersoll	12 00			27, 000	40, 000
San Diego, Cal		1		do	R. C. McCormick	10 00			1, 875	(*)
Santa Fé, N. Mex		1		do	J. L. Johnson	15 00			3, 000	5, 000
Toledo, Ohio		1		do	W. J. Finley	16 00			55, 000	170, 000
Umatilla, Oreg		1		do	J. H. Kenzie	10 00			300	2, 000
Vicksburg, Miss		1		do	J. F. Baum	16 66⅔			18, 000	30, 000
Virginia City, Mont		1		do	P. A. Largey	20 00			1, 000	1, 500
Visalia, Cal		1		do	Solomon Sweet	18 00			10, 500	30, 000
Wilmington, N. C		1		do	Bank of New Hanover.	20 83⅓			24, 000	30, 000
Winnemucca, Nev		1		do	S. B. Hughes	15 00			5, 000	10, 000
Wood's Holl, Mass		1		do	E. F. Fish	12 00			4, 500	8, 000
Yankton, Dak		1		do	J. E. Bruce	15 00			5, 625	7, 500
Washington, D. C	1			do	G. R. Graham	100 00	1725 G st., N. W		13, 647	22, 000
	1			do	Mrs. Carr	33 00	1718 Pennsylvania ave		9, 365	(†)
Leavenworth, Kans		1		Army signaling	George A. Eddy	25 00			5, 000	30, 000
Falls Church, Va			1	Signal practice	S. O. Munson	4 16⅔			1, 200	3, 000
			1		W. B. Bowie	8 33⅓			(‡)	
ADJUTANT GENERAL'S DEPARTMENT—RECRUITING SERVICE.										
Boston, Mass		4		Offices	H. N. Shepard	50 00			10, 000	14, 000
		6		do	Oriental Tea Company	70 00			83, 000	110, 000
Baltimore, Md	1			do	S. Barth and J. H. Hoffman.	35 00			6, 100	6, 000
		8		do	Ward Brothers	30 00			10, 208	10, 208
Buffalo, N. Y		8		do	R. P. Hayes	50 00			5, 190	9, 000
	1			do	Charles T. Coit	50 00			6, 542. 50	10, 000
Cincinnati, Ohio		4		do	A. J. Glaeser	35 00			20, 310	25, 200
	§1			do	J. Lowman & Bros	42 50			19, 340	25, 786
Cleveland, Ohio		3		do	E. C. Higbee	35 00			24, 000	44, 000
Chicago, Ill				do	O'Callaghan Bros	55 00		2d floor of building	10, 000	18, 000
Harrisburg, Pa		4		do	Gilliard Dock	45 00			5, 900	20, 000
Indianapolis, Ind		2		do	W. S. Webb and W. W. Woollen.	25 00			42, 000	48, 000

New York City	1			do	James Price	150 00			16,000	25,000
		5		do	Joseph Slevin	60 00			18,000	25,000
		3		do	J. H. Y. Cockcroft	45 00			14,000	19,000
Saint Louis, Mo	1			do	E. A. Nast	45 00			10,050	20,000
	1			do	L. D. Phipps	45 00			5,830	8,500
San Antonio, Tex	1			do	Adams & Wickes	30 00			1,300	3,000
Washington, D. C	1			do	C. H. Lieberman	45 00			2,634	6,000
SURGEON-GENERAL'S OFFICE.										
Washington, D. C				Office	W. W. Corcoran and G. W. Riggs.	266 66⅔	15th street and Pennsylvania avenue.	Part of building	86,113	96,626
New York City	2			do	Heirs of Henry Bruner.	375 00	124 & 126 Wooster street		57,500	96,000
COMMISSARY-GENERAL OF SUBSISTENCE.										
Washington, D. C	1			Offices	Estate of A. B. Stoughton.	208 33⅓			26,167	50,000
WAR-RECORDS OFFICE.										
Washington, D. C	1			Offices	Mrs. Annie L. Hanley.	75 00	2005 G street, N. W		12,303	18,000
ORDNANCE DEPARTMENT.										
Washington, D. C	1			Stable	Reginald Fendall, ag't.	10 00	19th street, near G			2,500

*Agent does not know real value. †Not given. ‡Can't be reached. §Store excepted.

Statement showing the number of buildings, rooms, and grounds rented by the War Department, &c.—Continued.

RECAPITULATION.

QUARTERMASTER-GENERAL'S DEPARTMENT.			
47 buildings, rented at an annual rent of	$76,060 32	Assessed value	$1,316,395 00
49 rooms, rented at an annual rent of	9,798 96	Real value	2,352,020 00
17 lots of ground, rented at an annual rent of	16,086 72	Covers value of buildings erected on the land by the United States.	
Total	101,946 00		
ENGINEER DEPARTMENT.			
13 buildings, rented at an annual rent of	7,904 00	Assessed value	1,882,749 95
82 rooms, rented at an annual rent of	10,605 00	Real value	2,956,559 00
15 buildings, rented in part at an annual rent of	7,228 00		
7 lots of ground, rented at an annual rent of	1,080 00		
1 piece of wharf property, rented at an annual rent of	360 00		
Total	27,177 00		
SIGNAL SERVICE.			
5 buildings, rented at an annual rent of	1,722 00	Assessed value	4,492,106 00
92 rooms, rented at an annual rent of	17,136 00	Real value	6,859,940 00
2 lots of ground, rented at an annual rent of	150 00		
Total	19,008 00		
ADJUTANT-GENERAL'S DEPARTMENT—RECRUITING SERVICE.			
8 buildings, rented at an annual rent of	5,310 00	Assessed value	310,404 50
1 building, rented in part at an annual rent of	660 00	Real value	447,764 00
47 rooms, rented at an annual rent of	5,340 00		
Total	11,310 00		
SURGEON-GENERAL'S DEPARTMENT.			
1 building, rented at an annual rent of	3,200 00	Assessed value	143,613 00
1 building, rented in part at an annual rent of	4,500 00	Real value	192,626 00
Total	7,700 00		
COMMISSARY-GENERAL OF SUBSISTENCE.			
1 building, rented at an annual rent of	2,500 00	Assessed value	26,167 00
		Real value	50,000 00
WAR-RECORDS OFFICE.			
1 building, rented at an annual rent of	900 00	Assessed value	12,303 00
		Real value	18,000 00
ORDNANCE DEPARTMENT.			
1 building, rented at an annual rent of	120 00	Assessed value	.....
		Real value	2,500 00

NOTE.—For the rent of the Quartermaster General's Office, Congress makes an annual appropriation of $10,000.

BIT A.—*Statement showing the amount of rent allowed at post-offices and postal stations he United States, also giving the names of owners of premises occupied by said post-offices stations.*

ame of post-office.	State.	Rent.	Name of owner.
.....	Michigan	$600	The Michigan State Insurance Company.
.....	Ohio	800	Aaron P. Baldwin.
.....	New York	4,000	Charles E. and Warren F. Leland.
.....	... do	180	E. & A. Harrington.
eny	Pennsylvania	1,300	The city of Allegheny.
own	....do	700	Reuben S. Shriner.
e	Ohio	300	Mrs. Margaret L. Young.
....	Illinois	500	The city of Alton.
a	Pennsylvania	600	Mountain Lodge, No. 281, A. Y. M.
st.	Massachusetts	270	Amherst Savings Bank.
rdam	New York	200	Caroline Newton.
olis	Maryland	500	Trustees of Masonic Hall.
rbor	Michigan	405	L. D. James and P. Chandler.
ton	Wisconsin	500	Augustus L. Smith.
on	Kansas	940	John A. Martin.
a.	Georgia	1,620	The State of Georgia.
ic	Iowa	180	F. O. Bryan.
n	Maine	600	Goff Brothers.
n	New York	1,200	Mrs. A. W. Knight *et al.*
ta	Maine	1,800	The Granite National Bank.
ta	Georgia	1,500	William H. Doughty.
a	Illinois	540	The city of Aurora.
.....	Texas	1,000	George B. Zimpelman.
ia	New York	360	L. Doty.
Creek	Michigan	700	James S. and Viola P. Upton.
ity	....do	900	William Westover.
nte	Pennsylvania	250	Edward C. Humes.
ille	Illinois	500	F. M. Taylor.
.....	Wisconsin	450	D. S. Foster.
ford	Maine	270	City of Biddeford.
amton	New York	1,000	McNamara Brothers.
gham	Connecticut	500	Robert C. Narramore.
ington	Illinois	1,200	Lyman Ferre.
City	Idaho	240	Eastman Brothers.
(for stations)	Massachusetts	7,300	(See separate statement marked A.)
rd	Pennsylvania	800	The Bradford Hotel Company.
eborough	Vermont	270	Town of Brattleborough.
port	Connecticut	1,500	Real-Estate Association of Bridgeport.
ton	Massachusetts	360	George E. Bryant.
lyn (including stations)	New York	7,160	(See separate statement marked B.)
gton	Iowa	700	Ellen Bodemann.
ell	Illinois	5	James Cole.
.....	Maine	500	Saint Croix Hall.
et	Michigan	108	Calumet and Hecla Manufacturing Co.
n	New Jersey	1,400	John S. Read.
n	Ohio	300	J. A. Saxton.
n City	Nevada	270	Carson City Savings Bank.
Falls	Iowa	150	E. A. Snyder.
Rapids	...do	810	John T. Ely.
al City	Colorado	540	First National Bank.
paign	Illinois	100	George Scroggs.
tte	North Carolina	300	Carson & Sanders.
nooga	Tennessee	200	J. H. Van Deman.
er	Pennsylvania	350	Levi G. James.
nne City	Wyoming	540	M. E. Post.
go (which is rent for sta-s, railway mail service, special agents).	Illniois	6,880	(See separate statement marked C.)
cothe	Ohio	200	C. W. Story.
ewa Falls	Wisconsin	400	L. C. Stanley.
nati (for stations and n for railway mail serv-	Ohio	1,820	(See separate statement marked D.)
sville	Tennessee	270	J. S. Elder.
land (rent of room for of railway mail service.)	Ohio	500	Cleveland Library Association.
n	Iowa	800	Frank H. Woodworth.
Water	Michigan	360	S. M. Seeley.
do Springs	Colorado	400	Mary S. and Thomas Wanless.
bus	Ohio	800	The city of Columbus.
bus	Georgia	1,000	Charles A. Klink.
rd	New Hampshire	1,200	Nathaniel White.
ng	New York	450	J. W. Brown.
.....	Pennsylvania	350	The city of Corry.
cton	Ohio	1	John Hesket *et al.*
il Bluffs	Iowa	900	M. G. Nixon.
ordsville	Indiana	135	B. B. Briggs.
erland	Maryland	600	Hopewell Hebb.
.....	Texas	1	John B. Stone.
ry	*Connecticut*	284	A. Wildman.

Statement showing the amount of rent allowed at post-offices, &c.—Continued.

Name of post-office.	State.	Rent.	Name of owner.
Danville	Illinois	$400	County of Vermillion.
Danville	Pennsylvania	600	Jacob Snyder.
Danville	Virginia	270	J. Holland.
Davenport	Iowa	800	The Gazette Company.
Dayton	Ohio	2,000	J. S. Wend *et al.*
Deadwood	Dakota	1,200	Star & Bullock.
Decatur	Illinois	400	John R. Mitchell *et al.*
Delaware	Ohio	100	Chauncy Hills *et al.*
Denver	Colorado	1,000	J. Hughes and A. Bissell.
Des Moines (for stations)	Iowa	100	E. S. Hurter.
Dixon	Illinois	180	Dixon Opera House Company.
Dover	New Hampshire	800	J. A. Walker.
Dunkirk (railway mail service, including rent of room.)	New York	366	C. K. Abell & Son.
Easton	Pennsylvania	1,000	Jacob Hay.
East Saginaw	Michigan	900	William Lloyd.
Eau Claire (including rent of stations).	Wisconsin	1,075	Henry C. Putnam *et al.*, W. P. McLaren.
Elizabeth	New Jersey	1,000	Amos Clark, jr.
Elkhart	Indiana	1	Elkhart P. O. Building Association.
Elmira	New York	1,300	John T. Rathbun.
Emporia	Kansas	150	Jacob Stotler.
Evanston	Illinois	600	Washington S. Scott.
Fall River	Massachusetts	2,700	William P. Marbel.
Fairbury,	Illinois	12	C. C. Bartlett.
Faribault	Minnesota	100	H. E. Barrow.
Fairfield	Iowa	300	First National Bank.
Fitchburg	Massachusetts	800	John M. Carpenter.
Flint	Michigan	180	J. B. Fenton.
Fond du Lac	Wisconsin	1,000	I. K. and W. C. Hamilton.
Fort Scott	Kansas	600	Charles F. Drake.
Including rent of room for railway mail service.		150	Do.
Fort Wayne	Indiana	1,000	Henry Burgess.
Frankfort	Kentucky	350	City of Frankfort.
Franklin	Pennsylvania	200	F. W. Matchet.
Frederick	Maryland	400	First National Bank.
Freeport	Illinois	1	Thomas D. Wilcoxon, agent.
Fremont	Ohio	270	H. R. Shomo.
Galesburgh	Illinois	460	Caroline Willard and C. Sutton.
Gardiner	Maine	650	John Berry.
Geneva	New York	350	Nancy J. Meuseh.
Georgetown	Colorado	540	E. C. Parmalee.
Gloversville	New York	300	W. J. Heacock.
Goshen	Indiana	12	I. H. Defrees *et al.*
Grass Valley	California	180	D. P. Holbrooke.
Green Bay	Wisconsin	90	M. V. B. Benson.
Greencastle	Indiana	90	George J. Langsdale.
Greenfield	Massachusetts	450	Eben A. Hall.
Hamilton	Ohio	350	Philip Huron.
Hannibal	Missouri	400	Southard & Waller.
Harrisburgh	Pennsylvania	1,800	William Calder.
Hartford (includes rent of room for special agent).	Connecticut	3,400	E. A. Burr.
Hastings	Minnesota	650	Stephen Gardner.
Haverhill	Massachusetts	720	James H. Carleton.
Helena	Montana	810	L. Beveridge.
Henderson	Kentucky	150	J. G. Barrett.
Hinsdale	Michigan	200	Henry Waldron.
Hoboken	New Jersey	700	Theresia Schneider.
Holyoke	Massachusetts	600	The Parsons Paper Company.
Honesdale	Pennsylvania	500	William H. and Isaac N. Foster.
Hornellsville	New York	500	Edward T. Young.
Houston	Texas	1,000	Henry S. Fox.
Hudson	New York	230	The City of Hudson.
Huntingdon	Pennsylvania	250	G. B. Armitage *et al.*
Iowa City	Iowa	1	Peter A. Dey.
Ithaca	New York	540	Cornell Library Association.
Jackson	Michigan	1,000	Oliver C. Goldsmith.
Jackson	Mississippi	600	Hubert Spengler.
Jacksonville	Florida	1,200	Helen and John L. Re Qua.
Jacksonville	Illinois	500	Anna J. Cassell, executrix.
Jamestown	New York	810	S. J. Jones.
Janesville	Wisconsin	1,000	Oliver B. Ford and William Macloon.
Jefferson City	Missouri	270	K. G. Cooper
Johnstown	Pennsylvania	250	David Dilbert.
Joliet	Illinois	600	G. D. A. Parks and James G. Elwood.
Kalamazoo	Michigan	900	Mrs. S. H. Ransom.
Kansas City	Missouri	3,000	Matthew Foster.
Includes rent of room for railway mail service.		800	Union Depot Company.
Keene	New Hampshire	360	Cheshire Provident Association.

Statement showing the amount of rent allowed at post-offices, &c.—Continued.

me of post-office.	State.	Rent.	Name of owner.
)	Wisconsin	$260	O. M. Calkins.
	Iowa	1,000	Celestine Gibbons.
n	New York	180	Kingston Building Company.
se	Wisconsin	1,600	Alexander McMullan *et al.*
le (for rent of room ecial agent).	Tennessee	120	John B. Minnis.
tte	Indiana	1,500	James Montgomery.
ty	Minnesota	300	William H. Lyon.
er	Pennsylvania	900	City of Lancaster.
	Michigan	1,000	Turner & Moody.
e	Indiana	400	John B. Niles.
City	Wyoming	400	E. Ivinson.
ce	Kansas	800	J. H. Sessions.
ce	Massachusetts	1,000	Frederic W. Schaake.
e	Colorado	2,000	Dennis Sullivan *et al.*
worth	Kansas	1,000	Mary S. Anthony.
n	Maine	990	City of Lewiston.
on	Kentucky	540	Broadway Real Estate Company.
	Ohio	200	The City of Lima.
	Illinois	100	D. H. Harts & Co.
alls	New York	500	Jean R. and George G. Stebbins.
ock (includes rent for l agent and railway ervice).	Arkansas	1,290	Leonard Mathews.
aven	Pennsylvania	400	William H. Brown.
t	New York	600	John Hodge.
port	Indiana	600	William W. Haney.
geles	California	600	Los Angeles Odd Fellows' Building Association.
	Massachusetts	2,000	B. F. Butler, executor, *et al.*
urgh (includes rent lway mail service).	Virginia	600	Marshall Lodge No. 39.
	Massachusetts	1,300	David H. Sweeter.
	Georgia	1,000	C. T. Ward.
	Indiana	200	J. R. Gorgas.
ster	New Hampshire	1,000	Alpheus Gay.
o	Minnesota	900	John F. Meagher.
ld	Ohio	500	Mary B. Parker.
tte	Michigan	180	Edward Breitung.
ll	do	360	Estate of P. Mitchell.
ltown	Iowa	600	The Marshalltown Hotel Company.
ille	California	450	J. F. Eastman.
n	Ohio	200	Jacob G. Bucher.
	Illinois	270	J. H. Clark.
le	Pennsylvania	500	Almond B. Richmond.
	New York	225	Hannah M. Bent.
is	Tennessee	2,400	The Masonic Temple.
a	Illinois	100	Gabriel Phol.
own	New York	1,000	Middletown National Bank.
polis	Minnesota	3,000	City of Minneapolis.
	Illinois	800	S. M. Wheelock.
ith	do	1	Perryman & Lytle.
	Michigan	180	J. J. Hubbell.
mery	Alabama	1,000	The city council of Montgomery.
lier	Vermont	900	J. R. Langdon.
	Illinois	150	Charles Spear and Jacob Geisen.
own	New Jersey	600	Estate of James Wood.
Pleasant	Iowa	500	George B. Corkhill.
Vernon	Ohio	500	Elizabeth D. and John G. Ames.
ne	Iowa	1,000	Simon G. Stein.
	New Hampshire	350	Knowles, Appleton & Co.
le	Tennessee	2,000	Jesse Warren *et al.*
	Mississippi	540	L. Botto.
ca	Nebraska	1	Western Star Lodge No. 2.
City	California	180	George F. Jacobs.
bany	Indiana	450	Music Hall Company.
	Ohio	400	James H. Smith.
rne	North Carolina	600	Edward R. Stanly.
itain	Connecticut	720	Russell & Erwin.
unswick	New Jersey	800	Joseph F. Fisher.
g	New York	1,250	James Bigler.
yport	Massachusetts	700	Mary Plumer.
stle	Pennsylvania	1	The city of New Castle.
ndon	Connecticut	1,500	The New London Hotel Company.
t	Kentucky	144	S. L. Jones.
	Massachusetts	200	Charles F. Rand.
ork (for stations)	New York	17,460	(See separate statement marked E.)
	Michigan	200	Lucinda E. Kellogg.
own	Pennsylvania	650	Norristown Hall Association.
Adams	Massachusetts	218	S. Blackinton.
npton	do	600	Joel Hayden.
k	Connecticut	360	Susan Hill.

Statement showing the amount of rent allowed at post-offices, &c.—Continued.

Name of post-office.	State.	Rent.	Name of owner.
Norwalk	Ohio	$270	C. H. Gallup, attorney.
Norwich	Connecticut	1,200	The Bulletin Association.
Oakland	California	800	George C. Potter.
Oberlin	Ohio	200	J. D. Carpenter.
Ogden City	Utah	600	Harkness & Co.
Oil City	Pennsylvania	600	Joseph B. Reynolds *et al.*
Oneida	New York	360	W. J. Hickox.
Orange	New Jersey	270	A. H. Freeman.
Oshkosh	Wisconsin	1,200	First National Bank.
Ottawa	Illinois	300	S. E. King and Hugh M. Hamilton.
Ottumwa	Iowa	540	C. P. Brown.
Owego	New York	270	F. K. Hull.
Owensborough	Kentucky	200	J. C. Rudd.
Paducah	...do	270	S. B. Hughes.
Painesville	Ohio	200	Marcia L. Warner.
Paris	Kentucky	200	George W. Ingels.
Paterson	New Jersey	800	The First National Bank.
Pawtucket	Rhode Island	1,000	Simon W. and Daniel S. Dexter.
Pekin	Illinois	1	Columbus R. Cummings.
Pen Yan	New York	270	Charles D. Welles.
Peoria	Illinois	1,500	S. D. Puterbaugh.
Philadelphia (including rent for stations).	Pennsylvania	4,110	(See separate statement marked F.)
Piqua	Ohio	150	Mary O. F. Conover.
Pittsfield	Massachusetts	1,000	The Berkshire Life Insurance Company.
Pittston	Pennsylvania	200	John Howell.
Plainfield	New Jersey	630	A. Berry.
Plymouth	Massachusetts	180	Odd Fellows' building.
Pontiac	Michigan	350	Robert Dawson.
Port Jervis	New York	500	Augustus B. Goodale.
Portsmouth	Ohio	360	W. W. Little.
Portsmouth	Virginia	600	Bain Brothers.
Pottsville	Pennsylvania	650	The Union Hall Association.
Poughkeepsie	New York	1,350	The city of Poughkeepsie.
Quincy	Illinois	1,800	Timothy Rogers.
Racine	Wisconsin	1,200	Hugh Gorton.
Reading	Pennsylvania	750	Bushong Brothers.
Red Oak	Iowa	400	John Bryson.
Red Wing	Minnesota	900	Jas. Lawther.
Richmond	Indiana	800	Hannah A. and Jno. W. Free.
Richmond (rent of room for railway mail service).	Virginia	300	John R. Popham.
Rochester	Minnesota	900	Rochester Lodge No. 13, I. O. O. F.
Rochester	New York	3,056	Mortimer F. Reynolds.
Rockford	Illinois	1,200	Selden M. Church *et al.*
Rock Island	...do	1,000	P. L. Mitchell and C. Lynde, jr.
Rome	Georgia	700	Judith E. Sheibly.
Rome	New York	500	D. P. McHarg.
Sacramento City	California	2,700	James Bailey.
Saginaw	Michigan	225	Penoyer & St. John.
Saint Albans	Vermont	720	The Weldon Hotel Co.
Saint Joseph	Missouri	300	Milton Tootle.
Saint Louis (for stations)	...do	528	(See separate statement marked G).
Salem	Massachusetts	600	Salem Savings Bank.
Salem	Oregon	360	Miller & Casper.
Salina	Kansas	360	A. M. Campbell.
Salt Lake City	Utah	1,200	Nicholas Groesbeck.
San Antonio	Texas	1,000	Peter Gallagher.
San Diego	California	480	David Felsenheld.
San Francisco (for stations and rent of room, special agent).	...do	3,100	(See separate statement marked H).
Saratoga Springs	New York	900	Jno. S. Leake.
Savannah	Georgia	2,500	Jno. Stoddard, trustee.
Schenectady	New York	500	Ellen G. and Gershom Banker.
Scranton	Pennsylvania	400	The Academy of Music Company.
Sedalia	Missouri	4 0	Jno. and Henry Leyser.
Selma	Alabama	900	Henry and Julia Cochran.
Seneca Falls	New York	600	Phœnix Mills.
Sharon	Pennsylvania	180	John Ashton.
Shreveport	Louisiana	675	J. G. McWilliams.
Sing Sing	New York	450	Geo. Rohr.
Sioux City	Iowa	1	Thos. J. Stone.
South Bend	Indiana	600	Wm. G. George.
Springfield	Ohio	1,000	Andrew C. Black.
Springfield	Massachusetts	2,300	The Springfield Five-Cent Savings Bank.
Stamford	Connecticut	252	B. Daskaen.
Staunton	Virginia	600	National Valley Bank of Staunton.
Sterling	Illinois	401	Galt & Tracy.
Steubenville	Ohio	400	Trustees of the I. O. O. F.
Still Water	Minnesota	360	E. G. Butts.
Stockton	California	1	G. W. Kidd *et al.*

Statement showing the amount of rent allowed at post-offices, &c.—Continued.

ame of post-office.	State.	Rent.	Name of owner.
r	Illinois	$1	Edwin Evans.
y	Pennsylvania	275	Masonic Hall Association.
se (includes rent for ay mail service).	New York	3,250	Stephen Bastable and Geo. K. Collins.
n	Massachusetts	1,500	Samuel O. Dunbar.
Iaute	Indiana	900	John S. Beach.
	Ohio	400	John M. Kaull.
lle	Pennsylvania	720	Estate of R. W. Mackey.
	Kansas	600	Topeka State Bank.
la	Pennsylvania	700	Penn Mutual Life Insurance Company.
	Arizona	300	J. H. Foote.
	New York	2,500	Troy Savings Bank.
	Ohio	100	Ross & Young.
	New York	1,080	Harrison Gilmore.
urg	Mississippi	1,000	Louis Hoffman.
nes	Indiana	4	H. A. Foulks.
	Iowa	1	William W. Hanford.
a City	Nevada	1,200	Joanna M. Driscoll.
	Texas	270	P. McClelland.
m	Massachusetts	225	Town of Waltham.
	Ohio	500	Orlando Morgan.
	Pennsylvania	405	G. W. Scofield.
w	Indiana	1	Edgar Haymond.
bury	Connecticut	1,200	Edward Lampson.
gton	Iowa	300	Joseph McKee.
gton	District of Columbia	5,000	James L. Barbour and Edmonia Semmes.
ographer's office		1,500	The Freedman's Savings and Trust Co.
oo	Iowa	300	Duncan H. Ferguson.
own	New York	500	Paddock Brothers.
own	Wisconsin	400	Frank P. Brook.
gan	Illinois	300	The Waukegan Hotel Company.
hester	Pennsylvania	450	The Bank of Brandywine.
ly	Rhode Island	500	R. Babcock and J. Moss.
ld	Massachusetts	500	First M. E. Society.
leriden	Connecticut	540	H. C. Wilcox.
a	Kansas	1	William C. Woodman.
Barre	Pennsylvania	700	W. G. Sterling and S. L. Thurlow.
nsport	Pennsylvania	1,000	Ayers & Lundy.
gton	North Carolina	2,400	Benjamin F. Newcomer.
	Minnesota	1,550	Thomas Simpson *et al.*
ocket	Rhode Island	405	Harris Institute.
r	Ohio	360	A. S. McClure.
ter	Massachusetts	1,750	The Pearl Street Association.
	Ohio	200	Eli Millen.
n	Dakota	200	Mrs. A. K. Pennington.
s	New York	600	C. E. Waring.
	Pennsylvania	450	Daniel A. Rupp.
town	Ohio	500	Paul Wick.
ti	Michigan	250	Eugene Laible.
ille	Ohio	800	Thomas J. Maginnis.
otal		285,375	

Supplementary Exhibit A.

A.—BOSTON, MASS.

Name of station.	Name of owner.	Rent.
dgeport	Watson G. Cutter	$1,000
dge	President and Fellows of Harvard College	550
Cambridge	Fitchburg Railroad Company	100
mbridge	Trinity Methodist Episcopal Society	550
End	A. J. Sargent	800
n	National Bank of Brighton	350
town	Warren Institute for Savings	400
	Estate of Nancy Campbell	600
ster	John H. Robinson	200
oston	D. H. Blaney, agent	600
a Plains	Thomas P. Procter	300
Auburn	J. A. Wyeth	200
y	William Sheafe	600
ille	Charles Demond, trustee	400
Boston	William P. Hunt	650
Total		7,300

Supplementary Exhibit A—Continued.

B.—BROOKLYN, N. Y.

Name of station.	Name of owner.	Rent.
Main office	Brooklyn Trust Company	$4,500
Williamsburgh Station	L. M. Palmer	1,500
Green Point Station	Emma J. Sparrow	400
Brevoort Station	Ezra B. Tuttle	400
Van Brunt Station	Thomas Bell	360
Total		7,160

C.—CHICAGO, ILL.

North division	Chicago Turngemeinde	1,00
Northwest	John Buehler	4
South division	C. Kann	4
Southwest	William Ruehl	4
Stock-yards	Union Stock-Yard and Transportation Company	8
West division	W. H. Hawkins	2,
Office for special agents	M. C. Stearns	
Office for railway mail service	do	1, 200
Total		6, 880

D.—CINCINNATI, OHIO.

Columbia	F. B. Ferris	260
Cumminsville	John F. Myers	260
South Pendleton	John Blecker	200
Office for railway mail service	Indianapolis, Cincinnati and Lafayette R. R. Co.	1,100
Total		1,820

E.—NEW YORK, N. Y.

Station A	Thomas E. Davis, executor	4,200
Station B	John Hassell	1,400
Station C	A. G. Bogert, executor	1,100
Station D	The Cooper Union	1,900
Station E	J. R. Brown, agent	1,800
Station F	Henry C. Kingsley	1,800
Station G	Apartment Hotel Company	1,400
Station H	Henry S. and Mary Day	1,800
Station K	J. B. Whitbeck and C. E. Quackenbush	900
Station L	William C. Spears	650
Fordham	John B. Haskin	250
Morrisania	John H. Henry	260
Total		17,460

F.—PHILADELPHIA, PA.

Station B	E. Lyster	750
Station E	I. Zeigler	480
Station F	W. R. Cotter	360
Station G	W. H. Ginhart	800
Station H	G. Bessan	120
Station I	C. Heritage	600
Money-order rooms, adjoining main office	S. R. Martin	1,000
Total		4,110

G.—SAINT LOUIS, MO.

North Saint Louis	Margareta M. Buddicke	312
South Saint Louis	William A. Wernreich	96
West Saint Louis	P. H. Cronin	120
Total		528

Supplementary Exhibit A—Continued.

H.—SAN FRANCISCO, CAL.

Name of station.	Name of owner.	Rent.
Station A	J. D. Fry	$840
Station B	Reuben Morton	900
Station C	D. H. Wulzen	360
Office railway mail service	R. M. Sherman	600
Office special agents	Williams & Bixler	300
Total		3,100

EXHIBIT B.—*Grounds, buildings, and rooms rented for customs offices for year ending December 31, 1879.*

Station.	Use.	Name of lessor.	Period.	Rent per annum.	Remarks.
MAINE.					
Camden	Customs office	Benjamin C. Gould	1 year from July 1, 1879	$50 00	
Searsport	do	Levi Trundy & Co	do	25 00	
Southwest Harbor	do	Thomas Clark	do	30 00	
Lubec	do	C. J. Staples	do	36 00	
Calais	do	S. T. King	1 year from January 1, 1879	160 00	
Calais (Lower Bridge)	do	Mrs. Ann McCullough	1 year from July 1, 1879	75 00	
Vanceborough	do	European and North American Railway Company.	do	100 00	
Portland	Boat-house	Custom-house Wharf Company	do	75 00	Peleg Barker, treasurer.
Saco	Customs office	Jordan & Bryant	do	75 00	
Damariscotta	do	Artell A. Hall	do	40 00	
Saint George	do	Nelson Hall	do	40 00	
Thomaston	do	James H. H. Hewett	do	40 00	
Fort Fairfield	do	Jesse Drew	do	50 00	
Houlton	do	C. P. Tenney	do	125 00	
Wiscasset	do	D. W. Sawyer	do	100 00	
VERMONT.					
Burlington	Customs office	Shepard and Morse Lumber Company.	1 year from July 1, 1879	50 00	
Saint Albans	do	D. D. Ranlett	do	300 00	
Swanton	do	F. Tarble	do	75 00	
Derby	do	J. R. Gilman	do	75 00	
Alburgh	do	N. K. Martin	do	50 00	
Franklin	do	James Randall	do	40 00	
Troy	do	A. B. Chaffee	do	50 00	
Island Pond	do	John Reeve, agent	do	200 00	
Alburgh Springs	do	W. N. Lewis	do	50 00	
Berkshire	do	C. R. Elrick	do	25 00	
Newport	do	H. S. Root	do	90 00	
Canaan	do	E. C. Aldrich	do	50 00	
Highgate Springs	do	Not known	do	25 00	
Richford	do	A. B. Chaffee	8 months from Nov. 1, 1879	75 00	
CONNECTICUT.					
Bridgeport	Customs office	C. L. Sanford	1 year from April 1, 1879	300 00	
Hartford	Weigher's office	Estate of H. W. Palmer	At will	24 00	
New Haven	do	Union Wharf Company	1 year from July 1, 1879	100 00	
Stonington	Custom-house	William L. Palmer	1 year from February 14, 1879	150 00	Renewed at same rate.

RHODE ISLAND.					
Bristol	Customs office	John B. Taylor	1 year from April 1, 1879	20 00	
MASSACHUSETTS.					
Boston	Appraiser's stores	Joshua M. Sears	1 year from April 1, 1879	5,000 00	
	do	C. G. Stevens *et al*	do	13,000 00	
	Night inspector's office	J. G. Palfrey *et al*	1 year from June 1, 1879	1,250 00	
	Barge office	Long Wharf Company	1 year from April 1, 1879	500 00	
	For commander revenue tug	do	1 year from July 1, 1879	150 00	
	Boat-house	do	1 year from April 1, 1879	250 00	
	Dockage	do	do	300 00	
Boston (411 Commercial street)	Weigher's office	Constitution Wharf Company	1 year from July 1, 1879	175 00	
Boston Long Wharf	do	Long Wharf Company	do	100 00	
East Boston, Grand Junction Wharf.	do	Boston and Albany Railroad Company.	do	60 00	Charles E. Stewart, treasurer.
East Boston, National Dock	do	National Dock and Warehouse Company.	do	75 00	S. Burr, treasurer.
South Boston Wharf	do	Boston Wharf Company	do	100 00	J. D. Farnsworth, treasurer.
Charlestown (Damon's wharf)	do	Not known	do	125 00	
Edgartown	Customs office	S. Osborn, jr	do	50 00	
Vineyard Haven	do	Benjamin C. Cromwell	do	25 00	
Fall River	Custom-house	American Print Works	do	400 00	S. M. Brown and T. J. Borden, trustees.
Gloucester	Boat-house	Charles Parkhurst and Son	1 year from January 1, 1879	20 00	
Marblehead	Customs office	Humphreys & Twisden	1 year from May 18, 1879	55 00	
Nantucket	do	Pacific Rooms Association	1 year from July 1, 1879	60 00	James H. Gibbs, treasurer.
Plymouth	do	George F. Weston	do	125 00	
NEW YORK.					
Buffalo	Appraiser's store	E. D. Welch	1 year from May 1, 1879	800 00	
	Ferry office	J. E. Thornton	do	60 00	
Cape Vincent	Customs office	J. A. Whittemore	1 year from July 1, 1879	125 00	
Alexandria Bay	do	Cornwall & Walton	1 year from January 1, 1879	30 00	
Clayton	do	H. C. Rees & Co	do	30 00	
Rouse's Point	do	S. A. Kellogg	1 year from July 1, 1879	120 00	
Mooer's Junction	do	E. S. and H. W. Laurence	do	24 00	
Whitehall	do	O. F. Davis	do	125 00	
Dunkirk	do	C. E. Koch	do	75 00	
Rochester	do	Mechanics' Savings Bank	do	700 00	
Charlotte	do	E. M. Upton	do	150 00	
New York	Appraiser's stores	Paul N. Spofford	3 years from May 1, 1877	58,000 00	Renewed at $50,000.
	Naval office	J. B. and J. A. Post	do	32,000 00	New premises leased at $10,000. To be discontinued at expiration of present lease.
	Storage room for unclaimed merchandise.	Royal Phelps	1 year from May 1, 1879	1,000 00	
	Barge office	A. Van Buren *et al*	1 year from Dec. 1, 1879	2,500 00	
	Chemical laboratory	William C. Hanna	6 months and 7 days from October 24, 1879.	500 00	

EXHIBIT B.—*Grounds, buildings, and rooms rented for customs offices, &c.*—Continued.

Stations.	Use.	Name of lessor.	Period.	Rent per annum.	Remarks.
NEW YORK—Continued.					
New York, 303 West street	Weigher's office	G. W. Sanford	1 year from July 1, 1879	*$16 66	
New York, 384 West street	do	William Farrell	do	*20 83	
New York, 175 South street	do	H. L. Meyer	do	*16 66	
Brooklyn, 12 Hamilton avenue	do	L. Couzen	do	*16 66	
New York, Wall street stores	do	W. L. Van Linden	do	*25 00	
Williamsburg	do	E. J. Dodge	do	*10 00	
New York, 79 Courtland street	Gauger's office	Joseph Slevin	do	*40 00	
New York, 175 South street	do	Fisher & Hedeman	do	*16 66	
Brooklyn, Atlantic street	do	Charles McNeill	do	*16 66	
Albany	Customs office	H. Pumpelly	1 year and 1 month from April 1, 1879.	250 00	
Port Day	Boat-house	L. W. Pettibone	1 year from July 1, 1879	3 00	
Lewiston	Customs office	George Collard	At will	50 00	
Ogdensburgh	Lot for boat-house	Not known	1 year from July 1, 1879	5 00	
	Ferry office	D. H. Lyon	do	72 00	
Morristown	Customs office	Not known	do	36 00	
Waddington	do	do	do	36 00	
Oswego	do	John M. Borrow	1 year from April 1, 1879	50 00	
Sodus	do	Silvanus J. Marcy	1 year from September 1, 1879	35 00	
Fair Haven	do	R. J. Myers	do	35 00	
Sag Harbor	do	D. Prail	1 year from July 1, 1879	50 00	
Greenport	do	W. Z. King	do	75 00	
NEW JERSEY.					
Bridgeton	Customs office	D. H. Elmer	1 year from July 1, 1879	40 00	
Burlington	do	W. L. Ashmore	At will	36 00	
Tuckerton	do	Samuel P. Bartlett	1 year from July 1, 1879	40 00	
Perth Amboy	do	R. P. Barton	do	150 00	
Somer's Point	do	Thomas E. Morris	do	50 00	
Camden	do	R. C. Wilkins	do	100 00	
PENNSYLVANIA.					
Philadelphia	Storage room	James Macauley	1 year from July 1, 1879	100 00	
	Wharf for revenue tug	Farr & Heckman	do	600 00	
	Inspector's office	H. L. and Maria Stewart	do	750 00	
MARYLAND.					
Annapolis	Customs office	T. J. K. Jones	1 year from April 1, 1879	75 00	
Crisfield	do	J. Stirling	1 year from January 1, 1879	250 00	Renewed at $200.

DELAWARE.					
Newcastle	Customs office	George Gray	1 year from January 1, 1879	80 00	
Lewes	....do	David R. Marshall	1 year from July 1, 1879	50 00	
VIRGINIA.					
Eastville	Customs office	George Toy	1 year from January 1, 1879	50 00	
Chincoteague	....do	N. S. Smith	....do	50 00	
Onancock	....do	Thomas W. Taylor	....do	50 00	
Norfolk	Boat-house	Boston Wharf and Warehouse Company.	1 year from May 15, 1879	150 00	T. B. Jackson, secretary.
City Point	Customs office	A. M. Drew	1 year from July 1, 1879	60 00	
Tappahannock	....do	Harrison Southworth	....do	60 00	
Yorktown	....do	Peter Halstead	....do	75 00	
NORTH CAROLINA.					
Beaufort	Customs office	Thomas Duncan	1 year from July 1, 1879	100 00	
New Berne	....do	E. R. Stanly	1 year from March 1, 1879	240 00	
Edenton	....do	H. A. Bond	1 year from July 1, 1879	60 00	
Elizabeth City	....do	Thomas Gaskins	....do	50 00	
	Storage revenue boat	N. R. Zimmerman	....do	12 00	
SOUTH CAROLINA.					
Georgetown	Customs office	P. E. Braswell	1 year from July 1, 1879	200 00	
Beaufort	....do	C. H. Wright	....do	200 00	
GEORGIA.					
Brunswick	Customs office	S. Duncan	1 year from July 1, 1879	300 00	
Darien	....do	J. K. Clarke	....do	240 00	
Saint Mary's	....do	E. Barker	....do	120 00	
ALABAMA.					
Mobile	Barge office	J. M. Hollingsworth	1 year from July 1, 1879	100 00	
MISSISSIPPI.					
Shieldsborough	Customs office	Mrs. C. Tudury	1 year from July 1, 1879	84 00	
Pascagoula	....do	A. Chanterant	....do	84 00	
Vicksburg	....do	J. A. Klein	....do	180 00	
LOUISIANA.					
Bayou Carondolet	Customs office	Not known	At will	120 00	
Old Basin	.... do	George C. Norcross	....do	60 00	
Eadsport	....do	James B. Eads	By sufferance	300 00	

* Per month.

EXHIBIT B.—*Grounds, buildings, and rooms rented for customs offices, &c.*—Continued.

Station.	Use.	Name of lessor.	Period.	Rent per annum.	Remarks.
LOUISIANA—Continued.					
Shreveport	Customs office	William Handrick	At will	$120 00	
Brashear	do	L. M. Darrall	1 year from July 1, 1879	200 00	
Morgan City	do	do	do	120 00	
FLORIDA.					
Apalachicola	Customs office	T. Orman	1 year from July 1, 1879	100 00	
Fernandina	do	G. Stark	do	300 00	
Jacksonville	do	C. B. Hazeltine	do	240 00	
Saint Mark's	do	James Williamson	do	120 00	
Cedar Keys	do	O. Bettelini	do	250 00	
TEXAS.					
Brownsville	Customs office	Joseph Cooper	1 year from July 1, 1879	2,000 00	
Edinburg	do	L. H. Box	At will	75 00	
Rio Grande City	do	Saul J. Stewart	do	100 00	
Roma	do	Felipe G. Hinojosa	do	100 00	
Point Isabel	do	William Baker	do	120 00	
Indianola	do	M. R. Rouff, administrator	1 year from December 1, 1879	360 00	
San Antonio	do	Wesley Ogden	At will	240 00	
Eagle Pass	do	J. A. Mante	do	240 00	
Galveston	Custom-house, &c	G. C. Fox	1 year from July 1, 1879	1,800 00	
El Paso	Customs office	S. C. Slade	do	300 00	
Cobabi	do	Not known	At will	120 00	
San Elizario	do	Maxime Aranda	do	120 00	
Silver City	do	B. Weise	do	120 00	
Las Cruces	do	M. J. C. de'Ochon	1 year from July 1, 1879	120 00	
Ysleta	do	Taide Duran	At will	120 00	
Tucson	do	Theodore Welisch	1 year from March 1, 1879	240 00	
Presidio	do	James A. Tays	At will	120 00	
Arizona City	do	James M. Barney	do	120 00	
Charleston	do	F. Herrera	1 year from Sept. 1, 1879	120 00	
Maricoba	do	Not known	do	120 00	
Corpus Christi	Warehouse	M. A. Belden	1 year from July 1, 1879	300 00	
	Custom-house	Thomas Kearney	At will	480 00	
San Bartolo	Customs office	Louis Gutierrz	do	150 00	
Laredo	do	C. G. Brewster	do	240 00	
TENNESSEE.					
Nashville	Customs office	J. K. Morrison	1 year from January 1, 1879	180 00	Renewed at same rate.
	do	Bank of Commerce	do	400 00	J. H. Omberg, cashier.
Memphis					

MISSOURI.					
Saint Louis	Appraiser's store	L. M. Rumsey & Co	19 months from June 1, 1879.	2,000 00	
	....do	Samuel Gary	5 months from Jan. 1, 1881 ..	2,000 00	
OHIO.					
Cleveland	Appraiser's store	R. K. Winslow	1 year from April 1, 1879	400 00	
Cincinnati	....do	Jacob Elsas	1 year from January 1, 1879..	2,100 00	New lease at same rate.
INDIANA.					
.....	.....	None	.....	.....	
MICHIGAN.					
Detroit	Customs office	J. & W. L. Horn	1 year from April 1, 1879....	300 00	
	Appraiser's store	William Livingston	1 year from April 15, 1879 ...	250 00	
Marquette	Customs office	Clev. Iron Mining Company ..	1 year from July 1, 1879	250 00	
Sault Ste. Marie	....do	George Kemp	....do	100 00	
Grand Haven	....do	H. Squier	....do	150 00	
Bay City	....do	Not known	....do	150 00	
Sarnia Ferry	....do	....do	....do	100 00	
Saint Clair	....do	....do	....do	75 00	
ILLINOIS.					
Chicago	Custom-house, &c	J. V. Farwell	1 year from May 3, 1879	12,000 00	
	Appraiser's store	P. Wadsworth	1 year from July 1, 1879	1,500 00	
Michigan City	Customs office	M. G. Sherman	At will	72 00	
IOWA.					
Burlington	Customs office	S. E. Taylor	1 year from July 1, 1879	108 00	
MINNESOTA.					
Duluth	Customs office	R. B. Hayes	3 years from October 1, 1879.	400 00	
Pembina	....do	C. Cavilear *et al*	1 year from May 10, 1879	250 00	
Bismarck	....do	Not known	2 years from July 1, 1878	150 00	
WISCONSIN.					
La Crosse	Customs office	Quinn & Batchelder	1 year from July 1, 1879.....	75 00	
Milwaukee	Storage room	H. Townsend, executor	1 year from October 1, 1879..	400 00	
CALIFORNIA.					
San Francisco	Cigar-inspector's office	J. T. Haycock *et al*	From March 1, 1879, till new building is ready.	600 00	
	Wharf	Board of State Harbor Commissioners.	At will	240 00	
San Diego	Customs office	Stewart & Capron	1 year from July 1, 1879	150 00	
OREGON.					
Portland	Appraiser's store	G. H. Flanders	1 year from August 1, 1879 ..	900 00	

EXHIBIT B.—*Grounds, buildings, and rooms rented for customs offices, &c.*—Continued.

Stations.	Use.	Name of lessor.	Period.	Rent per annum.	Remarks.
WASHINGTON TERRITORY.					
Port Townsend	Custom-house	Charles Eisenbeis	1 year 1 mo. from Dec. 1, 1879	*$75 00	
MONTANA.					
Fort Benton	Customs office	William G. Conrad	1 year from October 1, 1879	600 00	

* Per month

EXHIBIT B.—*Grounds, outbuildings, and rooms rented for offices internal revenue, &c.*—Continued.

State.	Station.	District.	Use.	Name of lessor.	Period.	Rent.
Alabama	Montgomery	Second	Collector's office	M. P. Legrand	July 1, 1879 to June 30, 1880	$350
Arizona	Prescott		do	J. Goldwater and Brother	do	300
Arkansas	Little Rock	Third	do	Grees & Leigh, agents	do	400
California	Sacramento	Fourth	do	E. J. C. Ketchum	do	420
	San Francisco	First	do	John P. Couch, agent	do	2,000
Colorado	Denver		do	Denver Co-Operative Loan, Building, and Homestead Association.	do	480
Connecticut	Norwich*	First	do	The Thames National Bank	do	200
	Hartford*	do	Deputy-collector's office	Estate of R. H. Foster	do	200
	Bridgeport	Second	Collector's office	Real Estate Association	do	350
Dakota	Yankton		do	Mrs. A. K. Pennington	do	150
Delaware	Wilmington		do	E. T. Taylor	do	300
Florida	Jacksonville		do	William Astor	do	410
Georgia	Atlanta	Second	do	E. L. Connally	do	420
	Macon	do	Deputy-collector's office	Turpin & Ogden	do	100
	Savannah	Third	Collector's office	City of Savannah	do	420
Idaho	Boisé City		do	Austin Savage	do	300
Illinois	Aurora	Second	do	Clark Allen	do	325
	Sterling	Third	do	First National Bank	do	500
	Quincy	Fourth	do	J. Parkhurst	do	500
	Peoria	Fifth	do	Moses Pettingill	do	900
	Champaign	Seventh	do	A. C. Burnham	do	120
Indiana	Greensburgh	Fourth	do	Will Cumback	do	100
	Terre Haute	Seventh	do	M. S. Durham	do	900
	Warsaw	Tenth	do	George Moon	do	120
	Anderson	Eleventh	do	C. S. Burr	do	100
Iowa	Davenport	Second	do	Gazette Company	do	275
	Burlington	Fourth	do	R. M. Washburn	do	250
Kansas	Leavenworth		do	Clark Company	do	500
Kentucky	Owensboro'	Second	do	F. Hall	do	400
	Lexington	Seventh	do	Fayette National Bank	do	375
	Lancaster	Eighth	do	W. H. Smith	do	200
	Maysville	Ninth	do	F. W. Armstrong	do	300
Maryland	Baltimore	Third	do		do	
	Washington	do	Deputy-collector's office	Second National Bank	do	400
	Cumberland*	Fourth	Collector's office	Daniel C. Bruce	do	200
Massachusetts	Newburyport	Fifth	do	B. F. Brown	do	500
	North Adams	Tenth	do	Adams National Bank	do	250
Michigan	Detroit*	First	do	Hugh Moffat	do	600
	Hillsdale	Third	do	D. A. Childs	do	150
	East Saginaw	Sixth	do	James Gleason	do	200
Minnesota	Rochester	First	do	A. Harkins, chairman	do	150
Mississippi	Jackson		do	J. and F. Green	do	360

*Including fuel and light.

			do	First National Bank	do	375
	Memphis	Eighth	do	R. C. Williamson	do	400
Texas	Galveston	First	do	Island City Savings Bank	do	600
	Austin	Third	do	George B. Zimpleman	do	540
	Jefferson	Fourth	do	East Line and Red River Railroad Company.	do	300
Utah	Salt Lake City		do	T. R. Jones	do	360
Vermont	Montpelier		do	James R. Langdon	do	150
Virginia	Danville	Fourth	do	C. G. Holland	do	600
	Lynchburg	Fifth	do	J. D. Langhorne	do	800
	Harrisonburg	Sixth	do	A. J. Nicholas	do	310
Washington Territory	Olympia		do	Emily D. Hayden	do	200
West Virginia	Clarksburg	First	Deputy-collector's office	W. L. Hursey	do	30
	Huntington	do	Collector's office	J. L. Crider	do	40
	Charleston	do	do	Ruffner Brothers	do	75
	Grafton	Second	do	E. G. Jeffreys	do	200
Wisconsin	Fond du Lac	Third	do	J. R. and W. C. Hamilton	do	400
	Sparta	Sixth	do	D. D. Cheney	do	150
Wyoming	Cheyenne		do	Edgar P. Snow	do	250
Total						50,472

[A] Including uel and light.

EXHIBIT B.—*Grounds, buildings, and rooms rented for light-house establishment, &c.*—Continued.

Station.	Use.	Name of lessor.	Period.	Rent.	Remarks.
14 Pemberton square, Boston, Mass.	Office	Hyde & Dickenson	Per year	$450 00	
Fuller's Rock, Connecticut	Light-keeper's dwelling	Samuel D. Hurd	do	150 00	
209 South Sixth st., Philadelphia, Pa.	Office	J. C. Harris (trustee), O. D. Cash.	Per month	18 75	
37 Union street, New Orleans, La	do	S. K. Perry	do	20 00	
394 Main street, Buffalo, N. Y	do	E. L. Stevenson	Per year	250 00	
80 Griswold street, Detroit, Mich	do	Miller & Bissell	Per month	28 75	
San Francisco, Cal	do	Charles Ashton	do	90 00	
Portland, Oreg	do	Atkinson & Wakefield	do	40 00	
S. W. corner Fourth and Walnut streets, Cincinnati, Ohio.	do	L. Hinsdale	do	40 00	
N. W. corner Sixth and Locust streets, Saint Louis, Mo.	do	L. E. Alexander, Rec. Columbia Life Insurance Co.	do	25 00	
Central Wharf, Portland, Me	Store-house	Frederick Fox	Per year	300 00	
	Berth for tender	Central Wharf Company	do	350 00	
13 Exchange street, Boston, Mass	Office	George D. Howe	Per month	50 00	
532 Walnut street, Philadelphia, Pa.	do	Edward Shippen	Per year	300 00	
1 Courtland street, Baltimore, Md	do	James W. Crothers	do	560 00	
75 East Bay street, Charleston, S. C	Store-room and shop	Riley & Doran	Per month	25 00	
Key West, Fla	Store-room	Charles Howe	do	10 00	
	Office	William Curry	do	35 00	
Conti, between Royal and Water streets, Mobile, Ala.	Lamp-shop and store-room	J. Howland, jr	Per year	90 00	
111 Water street, Oswego, N. Y	Office	Edwin Allen (executor), F. T. Carrington.	do	100 00	
85 Washington ave., Detroit, Mich	do	D. C. Whitcomb	Per month	40 00	
San Francisco, Cal	do	Charles Ashton	do	90 00	
127 First street, Portland, Oreg	do	H. W. Corbett	do	45 00	
82 West Third st., Cincinnati, Ohio	do	Enterprise Insurance Co	Per year	500 00	

EXHIBIT B.—*Grounds, buildings, and rooms rented for assistant treasurers, &c.*

Saint Louis, Mo	Office of assistant treasurer of the United States.	Columbia Life Insurance Company, L. E. Alexander, receiver, Saint Louis, Mo.	1 year from June 15, 1879.	$2,500 00	Per annum.
Tucson, Ariz	Office of United States designated depositary.	James H. Toole	At will	30 00	Per month.
Saint Louis, Mo	Store-room office assistant treasurer, Saint Louis, Mo.	Columbia Life Insurance Company, L. E. Alexander, receiver, Saint Louis, Mo.	1 year from June 15, 1879.	10 00	Per month.

EXHIBIT B.—*Grounds, buildings, and rooms rented for life-saving service, &c.*—Continued.

Buffalo, N. Y	Office of superintendent, district No. 9.	G. T Williams	October 3, 1879, to June 30, 1880.	$74 45	For the period.
Detroit, Mich	Office of superintendent, district No. 10.	Emma Ives	October 1, 1879, to June 30, 1880.	18 00	Per quarter.
Grand Haven, Mich	Office of superintendent and store-room, district No. 11.	Robert Howlett	October 1, 1879, to June 30, 1880.	60 00	For the period.
Cobb's Island, Va	Life-saving station No. 10, district No. 5.	C. H. Crumb	January 1, 1880, to June 30, 1880.	25 00	For the period, in place of station burned August, 1879.

EXHIBIT B.—*Grounds, buildings, and rooms rented for the revenue-marine.*

Eastport, Me	Coal warehouse with wharf privileges.	M. F. Peabody	For fiscal year	$300 00	Per annum.
Portland, Me	do	Custom-house Wharf Company	do	400 00	Per annum. Can be dispensed with at expiration of present fiscal year.
Edgartown, Mass	do	David Fisher and others	do	500 00	Per annum.
Wilmington, N. C	do	F. H. Darbey	do	400 00	Do.
New Berne, N. C	do	John Patterson	do	12 50	Per month.
Pass l'Outre, La	do	Good Intent Tow-boat Company.	do	10 00	Do.
New York, N. Y	Offices and store-room	Manhattan Oil Company	do	50 00	Per month. Occupied jointly by officers of revenue-marine and life-saving services.

EXHIBIT B.—*Grounds, buildings, and rooms rented for steamboat-inspection service.*

Albany, N. Y	Office	Van Antwerp *et al*	1 year from Apr. 1, 1879	$250 00	Per annum.
Buffalo, N. Y	do	D. C. Beard	1 year from May 1, 1879	300 00	Do.
Chicago, Ill	Storage room	Not known	At will	12 00	Do.
Cincinnati, Ohio	Office local inspector	Ent. F M. Insurance Company	1 year from July 1, 1879	500 00	Do.
Do	Office supervising inspector	William Wiswell	1 year from Aug. 1, 1879	300 00	Do.
Grand Haven, Mich	Office local inspector	H. C. Akely	1 year from July 1, 1879	75 00	Do.
Marquette, Mich	do	C L Mining Company	do	87 50	Do.
Memphis, Tenn	do	Bank of Commerce	1 year from Jan. 1, 1879	300 00	Do.
Nashville, Tenn	do	William Stockell	At will	200 00	Do.
Portland, Me	Storage room	Not known	do	21 00	Do.
Seattle, Wash	Office local inspector	H. L. Yesler	do	180 00	Do.
Saint Louis, Mo	Office supervising inspector	Mrs. C. G. Dimmock	1 year from June 15, 1879.	420 00	Do.

EXHIBIT B.—*Grounds, buildings, and rooms rented for Treasury Department in District of Columbia, &c.*—Continued.

Station.	Use.	Name of lessor.	Period.	Rent.	Remarks.
WASHINGTON, D. C.					
Fifteenth street, N. W., between D and E streets.	Bureau of Statistics	Mrs. P. Y. Brownell	1 year from July 1, 1879	$3,600	Per annum.
1421 G street, N. W.	Marine-Hospital Service	W. S. Thompson	do	1,800	Do.
Seventeenth st. cor. New York ave.	File-room, Second Auditor's Office	Miss Harriet McKean	do	1,200	Do.
641 Seventeenth street, N. W.	Property division, Second Auditor's Office.	Mr. Clark	do	1,200	Do.
205 New Jersey avenue, N. W.	Coast Survey and office of Standard Weights and Measures.	B. F. Butler	do	6,000	Do.
211 New Jersey avenue, S., and 215 South Capitol street.	Coast Survey	A. and F. A. Richards	do	14,000	Do.

EXHIBIT B.—*Grounds, buildings, and rooms rented for Marine-Hospital Service.*

Buffalo, N. Y	Marine Hospital Office	J. F. Schvillkoff	Jan. 1 to Dec. 31	$20 00	Per month. Paid from the Marine Hospital fund.
Chicago, Ill	do	E. Brainard	do	15 00	Do.
Cincinnati, Ohio	do	J. H. Tait	do	20 00	Do.
Cleveland, Ohio	do	J. H. Asplin	Sept. 1 to Dec. 31	5 00	Do.
Detroit, Mich	do	Newberry & McMillan	Jan. 1 to Aug. 15	11 67	Do.
Do	do	Detroit Tribune Company	Aug. 15 to Dec. 31	16 67	Do.
Louisville, Ky	do	T. J. Griffiths	July 1 to Dec. 31	10 00	Do.
Milwaukee, Wis	do	J. M. Allen	do	8 00	Do.
Pittsburgh, Pa	do	J. Rogers, president	Jan. 1 to Mar. 31	18 00	Do.
Do	do	do	Apr. 1 to Dec. 31	33 33	Do.
Richmond, Va	do	P. and A. Insurance Company	Sept. 1 to Dec. 31	8 33	Do.
Saint Louis, Mo	do	M. L. Kelly	Jan. 1 to Dec. 31	18 00	Do.
San Francisco, Cal	do	J. Van Bergen	Jan. 1 to Aug. 31	37 50	Do.
Tuckerton, N. J	do	J. L. Hand	Mar. 1 to Dec. 31	6 25	Do.
Port Townsend, Wash	do	G. M. Haller	Jan. 1 to Dec. 31	15 00	Do.

Grand total per annum $319,723.06.

EXHIBIT C.

Statement showing location of buildings occupied by the Department of the Interior in Washington City, the owners' names, amount of rent per annum, and the assessed valuation of same.

Location.	Owner's name.	Rent per annum.	Assessed valuation.
Corner Twelfth street and Pennsylvania avenue..	Alfred D. Jessup	$20,000 00	$150,247 00
Corner Thirteenth street and Pennsylvania ave..	William H. Barnard	4,000 00	66,054 00
Northeast corner G and Eighth streets.....	Mary I. Wright.....	7,200 00	42,200 00
Northwest corner G and Eighth streets	Sarah H. Johnson	1,500 00	11,500 00

EXHIBIT D.

NAVY DEPARTMENT,
Washington, February 6, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th instant, requesting a statement of all buildings or parts of buildings or grounds rented by this department, together with the names of the owners of such property, the assessed and real value of the same.

The following building and rooms are rented by this department, viz: Building for Naval Dispensary, corner Eighteenth and G streets, N. W., at $480 per annum; owner's name, Mrs. Mary M. Kearney; assessed or real value unknown. Rooms in Corcoran building for Nautical Almanac office, at $720 per annum; owner, W. W. Corcoran. Navy Pay office in Plant's building, corner New York avenue and Fifteenth street, rented from National Savings Bank, at $720 per annum.

This statement only includes property rented in the District. If the committee also desire information of rentals not in the District, the department will furnish it as soon as possible.

Very respectfully,

R. W. THOMPSON,
Secretary of the Navy.

Hon. P. V. DEUSTER,
Chairman Committee on Expenditures on Public Buildings,
House of Representatives.

EXHIBIT E.

DEPARTMENT OF JUSTICE,
Washington, February 6, 1880.

SIR: I am in receipt of your communication of the 4th instant. The Department of Justice occupies the four upper floors of the building owned by the Freedman's Savings and Trust Company, under a lease of $17,000 per annum, including the heating thereof. But Congress has of late years appropriated only $10,000 per annum for this purpose, which is the amount we are now paying.

The owners value this building, not including the remainder of the estate, at about $200,000, and its assessed value is about $117,000.

Very respectfully,

CHAS. DEVENS,
Attorney-General.

Hon. P. V. DEUSTER, M. C.,
Chairman Committee on Expenditures on Public Buildings,
House of Representatives.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1731.

McCRARY'S AMERICAN LAW OF ELECTIONS.

JUNE 9, 1880.—Laid on the table and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on Accounts, submitted the following

REPORT:

The Committee on Accounts, to whom was referred a resolution authorizing the purchase of 500 copies of the second edition of "McCrary's American Law of Elections" for the use of Members, Delegates, and committees of the House of Representatives, in relation thereto respectfully report:

That by a resolution of the House of Representatives in the second session of the Forty-third Congress, passed on the 3d of March, 1875, 400 copies of the first edition of this book were purchased for the use of the House, and it was ordered that they be kept for that purpose. Nearly, if not quite, all of these must be still in possession of the House, and in the opinion of the committee the changes in the second edition are neither so numerous nor so important as to necessitate an additional expenditure for the book as intended by the resolution. Besides this, the committee do not think it a proper precedent to establish, or to follow if it be already established, to purchase unnecessary books, which are not Congressional publications, for the use of individual members of the House.

For these reasons the committee recommend that the resolution do not pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1732.

THE PAY OF THE CAPITOL POLICE.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. A. HERR SMITH, from the Committee on Accounts, submitted the following

REPORT:

[To accompany H. Res. 128.]

The Committee on Accounts, to whom was referred the joint resolution (H. Res. 128) providing for the payment of one month's extra pay to certain of the Capitol police, having carefully considered the case in its various aspects, respectfully report:

That the joint resolution of July 1, 1879, upon which this claim is based, authorized and directed the payment of one month's extra pay to the employés of the House of Representatives whose names were borne on the annual rolls.

The names of the Capitol police are borne on the rolls of the Senate every alternate quarter of the year; accordingly, it was held by the Comptroller of the Treasury that they are only semi-annual employés of the House of Representatives, and as such are not within the provisions of the resolution referred to. In the resolution under present consideration, it is sought to give the said police the extra pay which they would have received if they had been included in the provisions of the resolution of July 1, 1879. To do this would entail an expenditure of $2,900.46 as follows:

For one captain at $1,600 per annum, $130.43	$130 43
For three lieutenants at $1,200 per annum, $100	300 00
For twenty-one privates at $1,100 per annum, $89.67	1,833 07
For eight watchmen at $900 per annum, $73.37	586 96
	2,900 46

An exhaustive search through the journals of the House for many years discovers no precedent for the action desired in this instance; and as the Committee on Accounts were opposed to the resolution of July 1, 1879, they have no disposition to give it even a quasi indorsement by making up any deficiency in its provisions. The committee therefore recommend that the resolution do not pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1733.

FEMALE EMPLOYÉS OF THE BUREAU OF ENGRAVING AND PRINTING.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O. R. SINGLETON, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 318.]

The Committee on Printing, to whom was referred the House joint resolution (H. Res. 318) "authorizing the payment of wages to the female employés of the Bureau of Engraving and Printing while that office is being removed," having considered the same, respectfully report it back to the House with the following amendment: At the end of the resolution, after the word "building" in line 9, insert the following: "Provided such period shall not exceed twelve working days"; and with said amendment they recommend that the resolution do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1734.

LAMPHERE'S UNITED STATES GOVERNMENT.

JUNE 9, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. O. R. SINGLETON, from the Committee on Printing, submitted the following

REPORT:

[To accompany H. Res. 307.]

The Committee on Printing, to whom was referred resolution (H. Res. 307) "for the purchase of one thousand five hundred copies of Lamphere's United States Government," having considered the same, respectfully report it back with the following amendment proposed as a substitute therefor:

Strike out all after the enacting clause, and insert in lieu thereof the following:

"That the Secretary of the Senate be, and he is hereby, authorized and directed to purchase a sufficient number of copies of Lamphere's United States Government to supply each Senator, Member, and Delegate in Congress with one copy of said work, and the sum of nine hundred and forty-seven dollars and fifty cents is hereby appropriated, out of any money or moneys in the Treasury not otherwise appropriated, to defray the expense of this resolution."

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1735.

REDEMPTION OF UNUSED STAMPS.

JUNE 9, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CARLISLE, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6461.]

The Committee on Ways and Means, having had under consideration the subject of the redemption of unused internal-revenue stamps, to which its attention was called by a letter from the Commissioner of Internal Revenue, dated February 14, 1880, *begs leave to report:*

That the seventeenth section of the act of March 1, 1879, prohibited the allowance of any claim for unused stamps, unless such claim should be presented within three years of the time when they were purchased from the government or from a government agent for the sale of stamps, and provided that no existing claim for the redemption of or allowance for any internal-revenue stamps other than the two-cent documentary stamps shall be allowed, unless presented within one year from the date of that act. The Commissioner of Internal Revenue, in his last annual report to the Secretary of the Treasury, called attention to the fact that the operation of this law worked great hardship in many cases, and recommended its repeal, and in a letter to the chairman of this committee he again called attention to the subject and inclosed the draft of a bill to carry out his recommendation. The letter reads as follows:

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, February 14, 1880.

SIR: Respectfully referring to the recommendation on page xcvii of my last Annual Report, I have the honor to inclose herewith, for consideration and such action as may be deemed advisable, the draft of an act for the repeal of that portion of section 17 of the act approved March 1, 1879, which imposes certain limitations upon the redemption of stamps.

The reasons for my recommendation of the amendment proposed are set forth in the report referred to, and are believed to be such as to convince any one that it is in the interest of justice and equity, and that it merits early and favorable action by Congress.

If it is desired, I shall be glad to wait upon your honorable committee in person, or by a representative, to explain the scope of the proposed bill and the necessity for its enactment into law, at any time that may suit your convenience.

Very respectfully,

GREEN B. RAUM,
Commissioner.

Hon. FERNANDO WOOD,
Chairman Committee on Ways and Means, House of Representatives.

The committee concurs with the Commissioner that the section ought to be repealed, and accordingly reports a bill for that purpose and recommends its passage.

C

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1737.

JAQUELIN M. WOOD.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TUCKER, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6462.]

The Committee on Ways and Means, to whom was referred House bill No. 5595, report:

The facts of the case are briefly these: Jaquelin M. Wood, stamp agent at Lynchburg, Va., was robbed by a clerk, and for the loss so occurring was sued on his bond, and judgment recovered against him and his sureties for the sum of $2,687.22, with interest from the 1st day of October, 1867, and costs amounting to $127.47.

The sum of $2,932.50 was allowed to said Wood by the Southern Claims Commission for supplies furnished the Union Army during the war, and was ordered to be credited on the aforesaid judgment.

As this claim was due for a period anterior to the date from which interest on the judgment was allowed, there seems to be every just reason for relieving him from interest on the judgment, as a greater amount was due him at the time his liability occurred, from the United States, than was due to them by him, as ascertained by said judgment.

If, therefore, the whole amount allowed by the Southern Claims Commission be credited on the judgment the account would stand thus:

Amount of judgment, principal	$2,687	22
Costs	127	47
	2,814	69
Amount allowed by Southern Claims Commission	2,932	50
Balance due J. M. Wood	117	81

The Comptroller of the Treasury, however, did not credit the whole amount of the allowance by the Southern Claims Commission, but allowed to a certain H. H. Willard one-fourth of said claim as attorney.

Wood denies the validity of any such claim of Willard as attorney; and the payment to him of $733.12 by the former Comptroller was without authority, and against the express provisions of section 3477 of the Revised Statutes, unless authorized by a power of attorney, the character and mode of execution of which are therein prescribed.

The present Comptroller reports to a member of this committee, on his application for information, that he has not yet found on file the power of attorney from Wood to Willard.

Wood denies any such power of attorney, and none has ever been proved.

Your committee therefore think the claim against said Wood has been fully discharged by the set-off of the claim allowed to him, and that a balance of $117.81 is justly due to him.

The committee report an amended bill allowing $117.81, instead of $245.28 allowed by the third section of House bill No. 5595, and recommend the passage of the bill so reported.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1738.

GEORGE G. SNYDER.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAPP, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill S. 1352.]

The Committee on the Public Lands, to whom was referred the bill (S. 1352) for the relief of George G. Snyder, have had the same under consideration, and make the following report:

Believing that the facts as set forth in the bill are true, and that said George G. Snyder is entitled to the relief asked, the committee direct that it be reported back to the House with the recommendation that it do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1739.

UNSURVEYED LANDS, KEYS, AND ISLANDS OF THE UNITED STATES.

JUNE 9, 1880.—Recommitted to the Committee on the Public Lands and ordered to be printed.

Mr. SAPP, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany bill H. R. 3693.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 3693) relating to the survey and disposal of unsurveyed lands, keys, and islands belonging to the United States, have had the same under consideration, and report as follows:

The object of the proposed legislation is to furnish proper provision of law by which isolated tracts of land belonging to the United States—but not embraced in any surveying district, nor included in any district created for the disposal of public lands—may be brought under the control of the Land Department, and made subject to the operation of the laws regulating the disposal of the public domain.

Under existing laws, surveying districts and offices for the sale of public lands are from time to time created by legislation, but only where there are large areas of land to be disposed of and the pressing demands of settlers make such provisions a necessity.

When in any district the work of surveying and selling has so far reached completion as to render such offices unprofitable to the government, the practice has been to discontinue them and transfer to the Commissioner of the General Land Office the duty of executing the law as to the residue of lands remaining undisposed of in such districts.

There are, however, frequent instances in which subsisting laws are not broad enough to meet the case, and which seem to demand further legislation. There are lands owned by the United States over which the land system has never been extended, and in no way subject to the operations of the land laws, but which could profitably be brought within the scope of such laws. This is especially true of islands and keys off the Pacific and Atlantic coasts lying beyond State jurisdiction and outside of any district created for the disposal of public lands, and it also affects lands in unorganized surveying districts, such as the strip of land lying west of the Indian Territory, east of New Mexico, north of Texas, and south of Kansas and Colorado (said strip being right in the path of the emigrant), and in all other cases where from faulty surveys areas have not been embraced in the legal boundaries of States and Territories.

There is now no law by which the United States can dispose of such outlying tracts, *and where not* absolutely needed for public uses the

true policy ot the government is to dispose of its title in such cases to individuals who may wish to secure it.

Unlike the great mass of the public domain, which through the machinery of a long-established system can be surveyed and sold as fast as the demands of the country may require, these keys and islands and the other lands referred to, unless otherwise provided, must remain undisposed of, and of no use or profit to either the United States or her citizens.

In the interest of economy, and to meet the exigencies of sale and settlement of islands and keys of limited areas distant from the mainland, the General Land Office should be empowered to accept the surveys of the Coast Survey proper in all such cases. Such has been the practice of the government under previous acts of Congress.

The expense of these surveys has been a very small amount beyond the usual appropriation for the Coast Survey proper, and much less than would be required by the General Land Office if it were able to execute the work, which would be exceedingly expensive.

Since the year 1857 the surveys of keys and islands have been continued without special appropriations, the expenses incurred having been met with the funds applicable for the general Coast Survey service.

In order to avoid special legislation hereafter and provide for a general system of survey and sale commensurate with national ownership, and looking at the same time to the settlement of waste and unoccupied lands, and the avoidance of conflicting titles, your committee deem the measure under consideration a very desirable one, and of immediate practical importance; it has the approval of the Commissioner of the General Land Office, and they respectfully recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1740.

BRIDGE ACROSS A CHANNEL OF THE MISSISSIPPI RIVER.

JUNE 9, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HENDERSON, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 2782.]

The Committee on Commerce, to whom was referred the bill (H. R. 2782) to authorize the Red Wing and Trenton Transit Company to erect a bridge across the east channel or slough of the Missisippi River, and for other purposes, having fully considered the same, find that the construction of the said bridge will not in any manner interfere with navigation, as will appear from the accompanying letter of A. Mackenzie, captain of Engineers, which is made a part of this report.

There being no objection to the construction of said bridge, the committee report the bill back to the House, and recommend its passage.

WAR DEPARTMENT,
Washington City, April 30, 1880.

SIR: In returning herewith bill H. R. 2782, "to authorize the Red Wing and Trenton Transit Company to erect a bridge across the east channel or slough of the Mississippi River, and for other purposes," received with your letter of the 17th instant requesting information in regard thereto, I have the honor to invite attention to the inclosed report of Capt. A. Mackenzie, Corps of Engineers, to whom the subject was referred, and to the report, also inclosed, of the Chief of Engineers, dated the 28th instant.

These reports, it is believed, convey such information as you desire upon the subject in question.

Very respectfully, your obedient servant,

ALEX. RAMSEY,
Secretary of War.

Hon. THOMAS J. HENDERSON,
of Committee on Commerce, House of Representatives.

OFFICE OF THE CHIEF OF ENGINEERS,
UNITED STATES ARMY,
Washington, D. C., April 28, 1880.

SIR: I have to acknowledge the reference to this office for report of the letter of the Hon. Thomas J. Henderson, of the 17th instant, with inclosed bill H. R. 2782, "to authorize the Red Wing and Trenton Transit Company to erect a bridge across the east channel or slough of the Mississippi River, and for other purposes," and requesting information in relation thereto, and in reply to invite attention to the accompanying copy of the report of Capt. A. Mackenzie, Corps of Engineers, to whom it was referred, from which it will appear that the general plan for the improvement of the navigation of the Mississippi River near Red Wing contemplates closing of the north channel by a dam, which would have been done last season had money been available for the work. There is, therefore, no objection to the passage of the bill H. R. 2782. Captain Mackenzie suggests that line 6 of the bill be amended by substituting the word *north* for east, as the former more correctly describes the channel proposed to be closed.

The letter of Hon. Mr. Henderson with inclosure is herewith returned.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Chief of Engineers, Brig. and Bvt. Maj. Gen.

Hon. ALEXANDER RAMSEY,
Secretary of War.

UNITED STATES ENGINEER OFFICE.
Rock Island, Ill., April 23, 1880.

GENERAL: I have the honor to acknowledge the receipt of letter addressed to the honorable Secretary of War by the Hon. Thomas J. Henderson, referred to me by indorsement dated Office Chief of Engineers, U. S. A., April 21, 1880, inclosing a bill to authorize the Red Wing and Trenton Transit Company to erect a bridge across the east channel or slough of the Mississippi River, &c.

The main channel passes in front of Red Wing, and closing the north slough, which is only occasionally used by a wood-flat or skiff, cannot interfere with navigation.

The general plan for improving the navigation of the Mississippi River near Red Wing contemplates the closing of this north channel by a dam, and this would have been done last season had money been available for the work.

I would suggest that in line 6 of the bill the word north be substituted for east, as it most properly describes the channel which it is proposed to close.

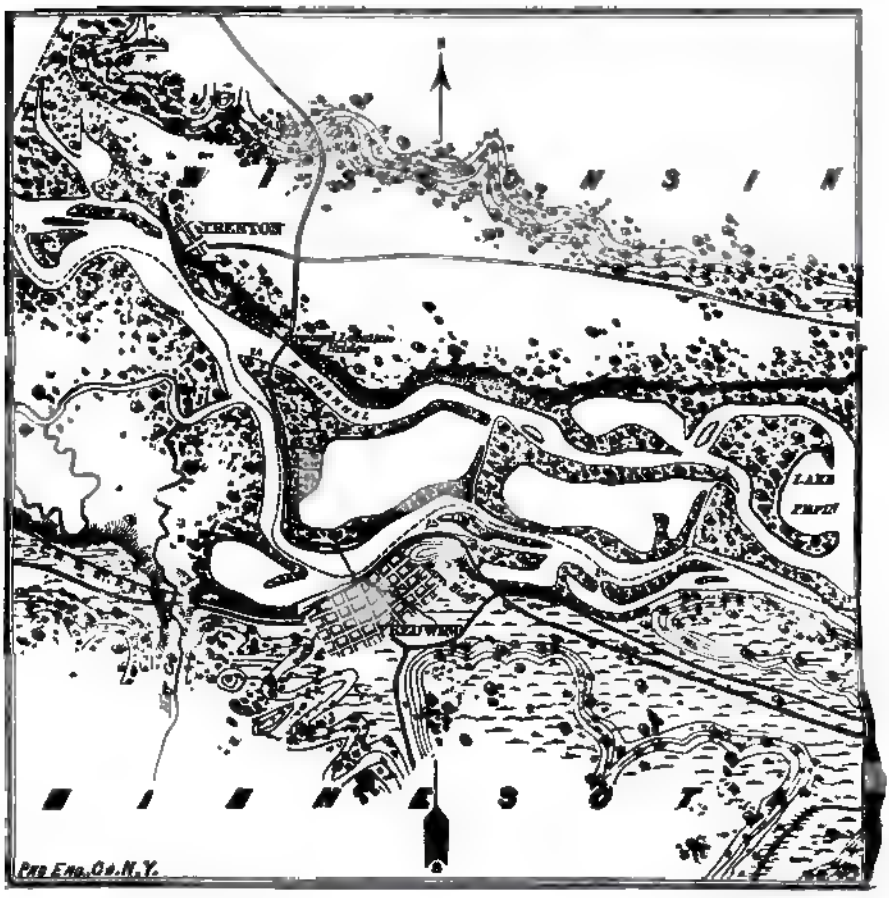
A sketch is attached showing the river between Trenton and Lake Pepin.

The communication from the Hon. Thomas J. Henderson and accompanying bill are returned herewith.

Very respectfully, your obedient servant,

A. MACKENZIE,
Captain of Engineers.

To the CHIEF OF ENGINEERS, U. S. A.
Washington, D. C.



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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1741.

DEPUTY COLLECTOR AT PUGET SOUND.

JUNE 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. DEUSTER, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 6463.]

The Committee on Commerce, having considered bill H. R. 2158, *beg leave to report as follows:*

San Juan and Whatcom Counties comprise the richest agricultural region in the northwestern part of Washington Territory. The surplus of its products, now quite large and steadily increasing, finds an eager market on the opposite side of Haro Strait in British Columbia. The vessels which transport this surplus are now required to clear through the Port Townsend custom-house. To do so they are obliged to go 100 miles or more out of their way, across the Strait of Fuca and back. The extra hazard and expense thus incurred consume the profits of and practically lay an embargo on this important trade. Two successive legislatures of Washington Territory have memorialized Congress for relief. The plan proposed by the accompanying substitute for the bill under consideration will afford the desired facility, tend to prevent smuggling, and entail no expense whatever on the government. It meets the approval of the collector of the district and the Secretary of the Treasury, and your committee unanimously recommend its passage.

ONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
Session. } { No. 1742.

MYRA CLARK GAINES.

1880.—Committed to the Committee of the Whole House and ordered to be printed.

RIGHT, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3046.]

Committee on Claims, to whom were referred House bill No. 3046 companying memorial of Mrs. Myra Clark Gaines, a citizen of the of New York, now residing in Washington, D. C., praying for sage of a bill authorizing the memorialist to make proof before prosecute in the United States Court of Claims to recover the f certain lands claimed as belonging to the said memorialist by of the last will and testament of her father, Daniel Clark, de and which said lands are situated in the city of New Orleans, ate of Louisiana, respectfully report that we have had under con- ion the papers, documents, certificates, &c., of the memorialist, have been presented as evidence of the correctness of the facts h in her memorial, which memorial is hereto appended and made hereof.

committee find that:

ne proof shows that the late Daniel Clark died in the year 1813, first made and published his last will and testament; that after acted litigation said will was finally established by the local of Louisiana and the Supreme Court of the United States.

nat by said will Mrs. Myra Clark Gaines was his sole heir and

nat said Daniel Clark at the time of his death was seized of a eal estate, consisting of many parcels and tracts of land, derived fferent sources, and among the number were the following: "A f land in the city of New Orleans, containing 1,920 toises square, d on the upper side by vacant lands and on the lower by the New Orleans aforesaid."

earing to the board from a royal order of the court of Spain, dated Madrid, , 1791, that said land was granted to Elisha Winter, and it appearing to the om sundry deeds of conveyance that said land has been transferred to the claimant, the board do therefore confirm him in his claim aforesaid.

nat these lands were covered by a grant of lands by the United to General La Fayette, under act of Congress, 1824.

nat Mrs. Gaines insists that these lands passed to her by devise er father, Daniel Clark.

nat the muniments of title and American State Papers (Duff edition) show a probable or *prima facia* title in Mrs. Gaines. (See 5, Gales & Seaton's edition, vol. 2, page 310.)

nis property *so granted* by the United States, having long since

passed into the hands of innocent purchasers, she does not see proper to pursue her rights into their hands, but she seeks redress in a money compensation at the hands of the government.

8. Her ignorance of her heirship and the long contest in establishing the will of her father and her rights under the same, were causes of delay in prosecuting these rights.

9. The committee, without pretending to adjudge the validity of the claim, think that the case ought to be reported to the Court of Claims that justice may be done in the case of this aged and long suffering lady.

The committee recommend passage of bill.

MEMORIAL OF MRS. MYRA CLARK GAINES.

To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Mrs. Myra Clark Gaines, a citizen of the State of New York, residing at this time in the city of Washington, D. C., respectfully shows:

That in the month of August, 1813, Daniel Clark, the father of the memorialist, a citizen and resident of the State of Louisiana, departed this life; that previous to his death, to wit, on the 13th day of July, 1813, he, the said Daniel Clark, made his last will and testament, wherein he left and bequeathed unto your memorialist all the estate, whether real or personal, of which he died possessed.

Your memorialist further represents that after a long and tedious litigation the said will was, by order of the supreme court of the State of Louisiana, admitted to probate in the second district court of the parish of Orleans, of the State of Louisiana aforesaid; that after such probate she was again compelled to enter into litigation to recover properties so left her by her father; that after several years she succeeded, by judgment of the Supreme Court of the United States, in recovering certain portions of the land belonging to said succession, said judgment declaring her to be the sole heir and universal legatee of her father aforesaid; and also that she did, on the 30th day of April, 1877, and subsequently, recover other portions of the land belonging to her, as said sole heir, by judgment of the circuit court of the United States for the fifth circuit and judicial district of Louisiana.

Your memorialist further represents that it appears from the records that Baron Carondelet, governor of the province of Louisiana, by royal order of the King of Spain and under powers conferred on him, granted Elisha Winter, by letters patent of the date of the 24th of May, 1794, 1,920 toises square of land, which is fully set forth in said patent, and that said 1,920 toises square of land through a chain of mesne conveyances came into the possession and ownership of the late Daniel Clark, her deceased father, and that subsequently the title to the said 1,920 toises square of land was confirmed by the old board of commissioners to her father, and a certificate, number 104, granted, which certificate your memorialist now holds as evidence of such confirmation.

Your memorialist further represents that subsequent to the confirmation of the title of said land to her father the heirs of General La Fayette were suffered to locate within the boundaries of the said 1,920 toises *square* of land, —— acres of land, which were by patent granted to the said *heirs of* La Fayette by the Government of the United States, and which

have subsequently been laid out into squares and blocks and now form part of the city proper of New Orleans; and believing that the government would not intentionally do a wrong to your memorialist, she having had to contend in the courts of her country to establish her right to the property so left her by her father, which has now been fully determined in her favor, she therefore, the premises considered, prays that you will, by special act to be passed by your honorable body, authorize and empower her to institute suit in the Court of Claims to have the same properly adjudicated upon by that honorable court, so that justice may be done to all in the premises.

MYRA CLARK GAINES.

Sworn to before me on this 18th day of December, A. D. 1879; and she, the said deponent, says that the facts therein stated are true to the best of her knowledge and belief.

[SEAL.] JOS. T. K. PLANT,
Notary Public.

In the matter of Mrs. Myra Clark Gaines, asking that Congress pass an act authorizing her to institute suit against the United States in the honorable the Court of Claims to recover certain lands claimed and as belonging to her as the sole heir and devisee of her deceased father, Daniel Clark, and so decided to be under the will of her said father of 1813 by the Supreme Court of the United States; said lands so claimed by her having been donated to General La Fayette by the United States Government; said court to entertain jurisdiction, and to pass upon its validity, and for an amount in value therefor.

The complexity of details, as well as the magnitude of the interests, as well as the importance of the principles involved, impel counsel in presenting to the honorable the Congress a correct adjudication, and to endeavor by method and analysis to relieve it as far as possible from confusion and difficulty.

In order to attain this end, counsel propose the following:

First. In this case Mrs. Gaines appears before you and respectfully represents, that in the year 1791 Estevan Miro, the then governor of the province of Louisiana under the Spanish Government, granted by letters patent from the King of Spain to Elisha Winter, a citizen of Louisiana, a piece of land for a rope-walk, having a frontage of 100 feet by a depth of 600 feet, according to a survey as made by Don Carlos Trudeau, the then surveyor-general of the province of Louisiana, and on which the patent or grant issued. Miro was subsequently, in the year 1793, superseded by Don Francisco Luis Hector de Carondelet, as governor of said province.

Second. On his accession as governor, among his first acts was to order that the lines of fortifications around the then city of New Orleans, *i. e.*, below what was and is now Custom-House street, down to what is now Barracks street, Rampart street, and Public road (levee), should be there fixed; in other words, that the lines as previously established should be contracted so as to include the streets and squares within the above designated points.

To accomplish this object it became necessary to remove or expropriate a portion of the land as granted by Governor Miro in the year 1791; consequently there was taken from the same 50 feet of the frontage by the depth of 600 feet, leaving Winter but 50 feet by 600 feet of his original grant.

To this act of Governor Carondelet, Winter protested against the injustice of the act, and the great loss he had sustained in the destruction of his buildings, &c.

On such representation being made, and he, the governor, convinced of the wrong done Winter, he then asked of Carlos Trudeau to transfer to him, Winter, a lot of ground which he, Trudeau, had previously received as a recompense or gratuity for services as volunteer engineer in constructing the former line of fortifications, as also another small lot of ground adjoining his, Trudeau's, and in the rear of Winter's remaining rope-walk. This land is thus designated on survey of Trudeau, as being given at the verbal request of the Senior Governor Carondelet, of the 13th July, 1793, to Elisha Winter, as an indemnity for the loss resulting from the destruction on the 23d April, 1793, of the rope-walk and principal buildings and other edifices. The dimensions are fully and distinctly delineated and given on the plat of survey of said land so given as an indemnity.

Third. Subsequent to this, and on the facts being presented to the governor that the foregoing lots of land were not sufficient indemnity for such loss, and withal

the said Winter had become a favorite of the governor, he, Winter, applied to him, Carondelet, for a grant of land situate above the line of fortifications, and to include that portion outside of the then city of New Orleans, and which, by survey made by said Trudeau under order of said Carondelet, designated in the patent granted to said Elisha Winter on the twenty-third day of May, 1794, and signed by him, Carondelet, wherein he granted to him, Winter, 1,920 toises square of land, all of which will appear by said patent, as also by the original certificate of confirmation granted to the father of Mrs. Gaines, and is to be found in the list of confirmations in second volume American State Papers, Duff Green's edition, page 265, Gales and Seaton's edition, volume 2, page 310, and which reads as follows:

"No 104. Daniel Clark claims a piece of land in the city of New Orleans, containing 1,920 toises square, bounded on the upper side by vacant lands, and on the lower by the city of New Orleans aforesaid.

"It appearing to the board, from a royal order of the court of Spain, dated Madrid, 23d May, 1791, that said land was granted to Elisha Winter, and it appearing to the board, from sundry deeds of conveyance, that said land has been transferred to the present claimant, the board do therefore confirm him in his claim aforesaid."

It will thus be seen that there were three separate and distinct transactions or transfers of property:

First. Miro's grant for the rope-walk property, 100 by 600 feet.

Second. The piece of ground that Trudeau owned, and another piece adjoining, given on the verbal request of Governor Carondelet to Winter as in indemnity to Winter. And,

Third. A subsequent grant or patent from Carondelet to Winter for 1,920 toises square.

Now these 1,920 toises square which had, through a chain of mesne conveyances, passed into the possession of Daniel Clark, and confirmed to him, comprised a large tract of land covering a portion of what was then termed the commons, and other lands in this tract of land, as shown by plat, was located a claim of General La Fayette.

By act of Congress, 28th December, 1824, there was granted to General La Fayette the sum and amount of $200,000, as also a township of land, to be located by him or his heirs. The lands were not located in one body, but in various parts of Louisiana and otherwheres. Among the lands thus located was a tract of 700 acres, situate and now covered by the present city of New Orleans. The survey of said tract of 700 acres was made by Bartholemy Lafon, then deputy surveyor of the United States under Gideon Fretz, then surveyor-general of the United States of lands south of Tennessee. The survey was approved and the land granted.

For the purpose of showing that the Government of the United States had no legal or equitable right thus to transfer the land stated, we have but to refer to the second volume of American State Papers, Duff Green's edition, and we find that the city of New Orleans applied to the same board of commissioners to confirm to them the same tract of land; but the board refused for among other reasons that it was covered by prior grants.

I consider it unnecessary at this time to enter into an elaborate history of subsequent events connected with this case. It might be asked why, if Daniel Clark was entitled to a patent, he did not obtain one? The answer is that Clark died soon after; that Myra Clark, his child, had been brought up in ignorance of his being her father; that the pretended executors of her father had certain interests to induce them to suppress the claim.

Again. It would not be proper at this time to detail fully all the relative points of this claim; that would be and will be hereafter a matter to be fully and clearly determined by the court to which she asks she may be permitted to institute her suit and there establish such claim; and in doing so, and the same being allowed, that she have and receive that which would be right in law as well as in equity she would be entitled to.

The history of Mrs. Gaines's life is one well and distinctly known not only to the people of this country but also to those of other lands. The life and trials of Mrs. Gaines, and a narrative of the great contests which she has had in asserting her rights as the legitimate heir and devisee of her father, are the most interesting and romantic chapters in judicial history. Born of a secret marriage; carried in her infancy into the house of a stranger, whose interest it was to conceal her parentage; reared to an age which would have been *passee* but for her childlike simplicity, before learning where or into what family she was born; she was awakened to the fact that she was a stranger in blood to him she called "father," and that she had been robbed of name and estate; penniless she came before the courts of Louisiana to assert that she was a forced heir, and hence was not bound by a revoked will, which had been probated and acted upon twenty years before she discovered her rights. Here she was met with a plea of all others most wounding to a sensitive lady in the very highest social position—a denial of her legitimacy. By perjury and subornation of perjury, that *high* tribunal, the Supreme Court of the United States, was deceived into sustaining

this plea, in an opinion the severity of which would have crushed any other nature; but a thousand such opinions, and the precedents of a thousand tribunals, aided by ten thousand scribblers and pamphleteers, could not crush the cause of law and lawyers. Had these remained silent the very stones would have become eloquent, and the graves would have released their dead, so that they might become witnesses.

She appealed to the local courts of Louisiana to establish the will of her father constituting her his sole heir. That will had been feloniously destroyed two score years agone. She had to select a tribunal where the interests of almost every man of wealth were arrayed against her.

So clear, so complete, so overwhelming was the evidence, that a court surrounded by all the prejudices of interested parties could not resist the proof of the facts and the tenor of the will. It was established as the last will and testament of Daniel Clark, and by it Mrs. Myra Clark Gaines was constituted the sole heir of her father.

Mrs. Gaines comes now to the Congress of her country and asks no unreasonable demand. Mr. Justice Davis, now one of your honored Senators, demonstrated the fact that Mrs. Gaines was the child of Daniel Clark, born in lawful wedlock; that she was his sole heir and devisee under a lawful will, with the capacity to take and recover his property; that the probate of a will by a State court of competent jurisdiction is conclusive of the validity and contents of the will in the Supreme Court of the United States; and that no time or prescription barred her right to any part of the property devised to her.

She therefore asks that Congress pass a law or act authorizing her to institute suit against the United States before the honorable the Court of Claims; that the prescription of five years or any other time should not be plead in bar for reasons stated; that after due proceedings being had, and she substantiating her claim to said property and the value thereof on final judgment being had against the United States, she be, as before asked, entitled and awarded judgment for the amount of value.

This is what she solicits; and, as a right, she trusts it will be awarded.

NEW ORLEANS, *December* 14, 1874.

DEAR SIR: Ever since my return I have been constantly engaged in examining the old records in the office of the custodian of notarial acts, to sift out, if possible, the chain of title to the "1,920 toises square," and the inclosed is the result of my labor.

It would appear that Mr. Dimitry and Mr. Coleman, who were employed to examine into the titles of Daniel Clark to properties, must have relied entirely upon the indexes on their searches, as I found a number of acts of late, by turning over page by page, not indexed. Consequently, as you will perceive, there are several acts now produced that they, D. and C., made no note of. The result brings up the question, are the properties mentioned in the acts of sale to Johnson & Liddle the same that were sold by Winter to Clark & Joyce? You will perceive in the sale of Winter to Clark & Joyce no mention is made of the rope-walk; that, however, in the sale of Joyce to Richard Clark, he, Joyce, sells the one-half of rope-walk, &c.; and in the sale of Richard Clark to Daniel Clark the same description is given.

In Chew & Relf's sale, as attorneys of D. Clark, to Lantos & Petot, this property undergoes a slight variation in description; it is designated as 1,920 toises, and concludes "with the rope-walk" or manufactory. In Lantos & Petot's sale to Chew the same description is given. But in Chew's sale to Clark the words "with the rope manufactory" are left out, and call for simply 1,920 toises square.

I found the act of August 6, 1806; by it you will perceive, or the synopsis, that the act of August 8, 1805, recognized August 6, 1806. The descriptions in the first act gives one-half of a lot having 1,920 toises square, and in the second act, August 6, 1806, gives "a lot called the rope-walk," and that it has 1,920 toises square. Now, Davis sells to Harper 62 feet front on Levee st., with a depth to Charter. And he, Harper, in turn sells to Clark the 62 feet called the rope-walk. And Clark in the end sells to *Johnson* half and to Liddle the *other half*. Now, as I remarked, is this the original 1,920 toises square sold by Winter? If so, how came Clark to have confirmed in HIS NAME a property he divested himself of March 2, 1810, and designated as 1,920 toises square, when the board refused to confirm to Winter a property he had sold and which McNeal owned, as well as other parties who had also divested themselves of their title? Query, Could not the notary have made a mistake in the description and confounded the properties? I am at a loss to account for such discrepancies, especially when I reflect that in those days the French and Spanish were the two languages in which the public records were written; besides which, in all the surveys of Trudeau, Guillenard, Devazin, and others, also Lafon, they always made use of the words *superfice* or *plantos* when arpents, toises, or fathoms were surveyed, and the words quadrada and carrè when they laid off a square. I would remark that there are no

plans annexed to any of these acts, although referred to in the sales. I have drawn a sketch of the property as sold by Clark to Johnson & Liddel, which I inclose.

I remain, very respectfully, yours, truly,

W. H. WILDER.

Hon. G. W. PASCHAL,
Attorney at Law.

No. 1. By act before Pierre Pedesclaux, July 3, 1797, Elisha Winter sold to Daniel Clark and John Joyce 1,920 toises of land square, situate in the upper part of the city, 30 feet distant from the palisades of the curtain of communication from the Fort Saint Louis towards Fort Burgoine, bounded on one side by the city and by lots belonging to different persons.

No. 2. By act before same notary, March 12, 1799, John Joyce sold to Richard Clark the undivided ½ of the rope-walk, containing 1,920 toises square, situate in the part above the city, 30 feet distant from the palisades of the curtain of communication from Forts Saint Louis and Burgoine. Also certain slaves, by act before same notary, May 28, 1800, Richard Clark sold to Daniel Clark.

No. 3. By act before same notary, March 17, 1802, Richard Relf and Beverly Chew, attorneys of Daniel Clark, sold to Lantos & Pitot sundry tracts of land in the districts of Natchez and Baton Rouge; and also 1,920 toises of land square situate above the city, 30 feet distant from the palisades of the curtain of communication from the Fort Saint Louis to that of Fort Burgoine, bounded below by the city and lots of individuals, with the rope manufactory, &c.

No. 4. By act before same notary, 21st May, 1802, Lantos & Pitot sold to Beverly Chew the same described property and slaves, as also the other lands.

No. 5. By act before same notary, 24th October, 1803, Beverly Chew, sold to Daniel Clark, first, a tract of land in the district of Natchez, on the west side of the Bayou Feliciana, containing 1,000 arpents superficial, bounded by Robert Musson, and on the south by John Joyce, and by lands of the royal domain, &c.; also, "a lot situate on the upper part above the city, containing 1,920 toises square (quadrangular), at 30 feet distant from the palisades of the curtain of communication from Fort Saint Louis to Fort Burgoine, bounded one side by the city and lots of individuals, &c., bought of Lantos & Pitot, 21st May, 1802."

No. 6. By act before Pierre Pedesclaux, August 28, 1805, Daniel Clark sold to Samuel B. Davis "the ½ of a lot situate in the upper part of the city, 30 feet distant from the ramparts, having 1,920 toises of land square, and extending along from the Fort Saint Louis to Burgoine, joining on one side towards the city lots of different persons, and belongs to him, Clark, from having bought the same with other lands of Beverly Chew, act before me 24th October, 1803."

This act is marked on the margin "Annulled 26th August"; no year given.

No. 7. By act before same notary, August 6, 1806, Daniel Clark sells to Samuel B. Davis a lot called (servain) the rope-walk, situate in the part above the city, 30 feet from the ramparts; the same has 1,920 toises square (carre), and runs from Fort Saint Louis to Fort Burgoine, bounded on one side by divers lots, to not include the lot sold William Stevens, and the other ½ heretofore sold Davis.

No. 8. By act before same notary, October 17, 1809, Samuel B. Davis sold to William Harper "a piece (morceau) of ground, commonly called the rope-walk, 62 feet, more or less, front on Levee street, with a depth on the line of Charter street, bounded by different individuals; bought the greater part of Daniel Clark by two acts of the date of 8th August, 1805, and 6th August, 1806.

No. 9. By act before same notary, December 2, 1809, William Harper sold to Daniel Clark a piece (morceau) of ground fronting on the levee and the palisades at 30 feet distant from the ramparts, commonly called the rope-walk, having 62 feet front on the levee, with a depth to the line of Charter street, bounded by different individuals, conformable to a plan now presented; bought of Samuel B. Davis, 17th October, 1809.

No. 10. By act before same notary, 23d March, 1810, Daniel Clark sold to James Johnson "a lot of ground having a front on Levee street of 62 feet, more or less, at the palisades of the fortifications, adjoining on the lower side the house of Mr. Larche. The lot forms the front (devanture) of the rope-walk, and embraces the ½ of the ground to the line of Charter street; bought of William Harper, act 2d December, 1809."

No. 11. By act before same notary, 23d March, 1810, Daniel Clark sold to William Liddle "a lot forming part of the rope-walk, having a front on Charter street and a depth on the line touching the land of James Johnson, bounded by Mrs. Sterret, and on the other side by the road of the palisades of the fortifications; bought of William Harper, act before me 2d December, 1809, all in conformity with plan of the rope-walk."

NEW ORLEANS, *May* 14, 1880.

Mrs. MYRA CLARK GAINES:

MY DEAR MADAM: I inclose herewith a brief statement of facts as to your claim to 1,920 toises square. I wrote out one much longer, but on review I concluded to rewrite and confine myself to the simple statement of facts which alone are necessary for the committee to act on.

It is useless to entertain them with a long history of what has heretofore taken place before the Commissioner of the Land Office or the Secretary of the Interior. Those questions as to the validity of your claim must and will come up before the Court of Claims or such other tribunal (legal) as Congress may refer it to. Under Ellis's bill it will come up before Judge Billings. The questions would then as I say, be raised and adjudicated upon. All you desire and ask Congress to do is to permit you to present the same before a court for it to determine the question as to the validity of the grant, your right as heir of your father, whether the heirs of La Fayette did receive from the government as a gratuity the 700 acres belonging to you, the value thereof, and what you shall receive.

You will carefully read it and submit to your counsel for such amendment as they may deem proper to make.

It is not, in the strict sense of the words of the law, a brief. When the case comes up before the court, the case can then be submitted in brief, *i e.*, on points of law and on the facts.

I have one that is fatal to him, that I keep dark. It is this he has not proved the value of his services, even if had rendered any.

Well, I have always said, and still say, that any one that did me a wrong I would love to see dead; it has ever been so. And the last poor tool of McConnell & Fellows died on Wednesday; I mean De Henricourt. Some of the crowd will, I trust, soon follow.

I send inclosed also a plat showing the exact location of the indemnity property given to Winter. Have it placed with the other plats until needed.

I have not seen Motts for over a week; he keeps clear of my office.

Emelie and Laura send their dearest love to you; Emelie is confined to her room; she expects by the 18th to be over her troubles. She had a severe fall yesterday on the floor; she is, however, doing well so far.

Please remember son to your s on and family; how are your dear little grandchildren, Mrs. C.'s children.

I remain ever truly, your friend,

WM. H. WILDER.

You will perceive there has been no use for experts. I found out it was to get me to bind you to pay, by note, Deslonde, and he would have let Mills have some part. All right; upon need, I will see you do not suffer.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1743.

GALLUS KERCHNER.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. L. H. DAVIS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6465.]

The Committee on Claims, to whom were referred the memorial of Gallus Kerchner and a bill for his relief, submit the following report:

On the 1st day of July, 1864, Kerchner entered into a contract with Capt. J. M. Whitmore, acting on behalf of the United States, to deliver 1,500 cubic yards more or less of stone at North Vernon, Ind., to be used in the construction of the arsenal building at Indianapolis, Ind. Pursuant to this contract, he delivered a large quantity in excess of what was used in the main buildings, but was used by the United States in various other ways. For the stone used in the main building he was paid the contract price, but for the stone used outside he was not paid. He brought suit in the Court of Claims; that court awarded him judgment for the amount that remained due him for the stone used in the main building, leaving unadjudicated the stone used outside of the main building, the proof then offered not being satisfactory to the court as to the quantity used in the various buildings by the United States. The court only gave judgment for the amount that appeared to be certainly due. The court say in their opinion: -

The precise quantity of stone thus delivered is not shown by the proof, but it abundantly appears that he delivered more than the 1,500 cubic yards required of him in the contract. The books of the railroad company over whose line of road the rock were shipped show that 442 car-loads were shipped under the second contract; and the proof establishes that each car-load averaged in gross 4¼ cubic yards, making in the aggregate 1,989 yards in gross. The claimant has been paid for 1,224¼ cubic yards, and the balance remains unpaid. But this result rests on the average estimate in gross of each car-load shipped from the quarry, and it is impossible for the court to fix with absolute accuracy the specific quantity of stone delivered by the claimant. But vague as the proof is in this respect, it is certain that he delivered under this contract the full amount of 1,500 yards called for in it; and for this amount, less the 1,224¼ yards for which he has been paid, he should recover. The stone delivered were all "dimension stone," and by the terms of the contract they were to be paid for at $5 per cubic yard, which gives for the 275¼ yards still unpaid for the sum of $1,377.50, for which judgment will be entered.

Judge Loring, dissenting, says:

I think in this case it is shown that the petitioner has been paid for all stone accepted under the contract and used in the arsenal building. But the evidence also shows that stone required for the building was used in various ways by the United States, but how much so used is not shown, and as the burden of proof of that is on the petitioner, *I think he is not* entitled to judgment had, but that his case should be *remanded to the docket for evidence.* (See 7 Nott & Huntington, 579, et seq.)

It will be seen by the foregoing opinion of the court that some of the judges wanted to remand the case for further proof on the point as to how much was used outside of the main arsenal building. The Court of Claims has no equity jurisdiction; therefore they had to confine their judgment to the written contract. The memorialist states that he is a foreigner, and not well acquainted with the English tongue, and did not understand the nature and terms of the contract which he entered into with the government to deliver the stone, and that he took it at a ruinously low rate, whereby he lost a large sum of money; besides, that he has not been paid for all the stone used by the United States, and that he can now prove by actual measurement all the stone so used, so that the court could award him judgment on a certainty. The evidence proves that the stone to quarry cost the claimant just twice as much as he contracted to furnish them for; besides, it cost him, as he alleges, $2 to haul to place of delivery. As the Court of Claims has partly adjudicated the case and understand more about the facts, and since the trial the claimant has taken evidence, and the United States cross-examined the witness with a view of having it tried again by the court, and from the evidence it is clearly proven that the claimant is entitled to some measure of relief, but the exact sum the committee are not willing to determine, they therefore recommend that the whole matter be referred to the Court of Claims, with directions to hear, try, and determine the same according to law, and to render such judgment as to them shall be required by equity, justice, and the law, the same as if the said claim was not barred by any statute of limitation, or any former judgment rendered by said court in this cause, and to give judgment for the fair and reasonable value of the stone used by the United States. This bill was favorably reported from the Senate Committee on Claims in the Forty-third Congress, second session. (See Report No. 676.)

Your committee therefore report the accompanying bill, and recommend its passage.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1744.

BYRON H. HARKNESS.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. L. H. DAVIS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2973.]

The Committee on Claims, to whom was referred the bill (H. R. 2973) for the relief of Byron H. Harkness, postmaster at Humboldt, Humboldt County, Iowa, have had the same under consideration, and beg leave to report as follows:

Mr. Harkness is the postmaster at Humboldt, the principal town in the county of Humboldt, Iowa. On the night of the 6th October, 1879, his store was broken into, the safe was blown open, and such private funds as the postmaster had on deposit were taken, besides $228.66 in postage-stamps, and such money-order funds as had been taken during the day. All the facts are so fully and succinctly set forth by the special agent of the Post-Office Department sent to examine and report to the Postmaster-General, that his statement is included herein and made a part of this report.

CHICAGO, ILL., *February* 16, 1880.

SIR: I herewith return case No. 32,427, B, in relation to the robbery of the post-office at Humboldt, Humboldt County, Iowa, on the night of October 6, 1879, with my report.

In my investigation I find that B. H. Harkness is at the present time, and was on October 6, postmaster at Humboldt; that said post-office was, on the night of the robbery, located in the finest building in town; that the government funds stolen consisted of 3-cent stamps to the value of $132.09, and $95.75 in money-order funds, and that the stamps and money-order funds were, at the time of the robbery, deposited in one of Hall's fire-proof safes in said office; said safe was new, and weighed about twenty-three hundred pounds.

The robbers gained entrance to the post-office by forcing the front doors with crow-bars.

They then drilled two holes in the safe and blew it open with powder, and stole therefrom, not only the above-described government funds, but two registered letters, and $120 in money belonging to the postmaster (his private funds). As soon as the postmaster learned that the post-office was robbed (which was at an early hour the following morning) he immediately went to work and offered a reward of $100 for the arrest of the guilty parties; and although they have not been arrested, nor the government funds recovered, still I am confident that the postmaster is a very prudent, honest, and cautious man, and has done everything in his power to protect the best interests of the Post-Office Department, and that the robbery and loss did not occur through any fault, neglect, or connivance on his part.

Very respectfully,

A. B. SPURLING,
Special Agent Post-Office Department.

Capt. J. E. STUART,
Special Agent Post-Office Department, Chicago, Ill.

In view of these facts, plainly showing that the loss was through no fault of the postmaster, and that it would be a great hardship for him to be held responsible under the circumstances, your committee ask to be discharged from the further consideration of the bill, and recommend its passage.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1745.

M. D. HAMPTON AND C. S. WILSON, ADMINISTRATORS OF E. L. ALLEN, DECEASED.

JUNE 9, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BRIGHT, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6463.]

The Committee on Claims, to whom was referred the bill (H. R. 5476) for the relief of Alexander & Co., of Fayetteville, Tenn., having had the same under advisement, report:

That the firm of Alexander & Co. was composed of W. S. Alexander, E. L. Allen, and N. B. Alexander, the last-named being now dead. Said firm were engaged, under the internal-revenue laws of the United States, from about the 1st day of December, 1866, until about April, 1867, in the distillation of spirits in Lincoln County, Tennessee, during which time they manufactured a lot of whisky, amounting to 2,236 wine-gallons, which were seized by the government officers of the United States under the following circumstances, at Huntsville, Ala., while *in transitu* to Memphis, Tenn., about May 1, 1867: Said whisky had been regularly gauged by T. O. Crawford, an inspector of the United States, and a permit to ship the same had been obtained from the collector of the district, as appears from copies of the permits filed with the papers. Said seizures and detentions were made by the government on a charge that there were more proof-gallons of whisky in said barrels than had been assessed thereon.

At the time of said permits the section of country in which said distillery was located had only recently come under the supervision of internal-revenue officers. Officers and distillers, to a certain extent, were ignorant of the laws and regulations, and particularly the mode of ascertaining the proof-gallons of spirits, as defective instruments were used in gauging. This appears from the fact that a short time after said whisky was seized it was regauged, and found to contain upward of five hundred proof-gallons more than the same gauger had only a few days before gauged it at. The matter was referred to the then Commissioner of Internal Revenue, who refused to declare the same forfeited to the government, on the grounds that there was no intentional fraud in the case, and that the irregularity was more the fault of the government officers than of the distillers; whereupon he directed the collector, Mr. Joseph Ramsey, to release the same upon the payment of the taxes thereon. It appears that the distillers were unable to raise the money to pay the taxes except out of the sale of the whisky, and the whisky was retained by the government officer, Mr. Joseph Ramsey, on deposit in Huntsville, Ala., and who appointed one W. M. Alexander as his special agent, or as the agent of the government, to sell said whisky for

the purpose of discharging the taxes due thereon. The total amount of taxes due to the government amounted to about $4,222, on 2,286 wine-gallons. The whisky itself was worth about $3.25 per gallon at that time, making $7,429. The whisky at no time was under the dominion or control of the claimants.

It appears from the testimony that the agent took charge of the whisky in May, 1867; that it was stored with the firm of Neil & Sprague, of Huntsville, Ala., private merchants, there being no bonded warehouse in that place. The store-house was a large single room, which the firm used as a grocery store, the whisky being in the same room, where it remained until the last of the lot was sold in December, 1867. It appears from the testimony that said agent, W. M. Alexander, applied several times to John Faris, United States deputy collector at Huntsville, Ala., for permission to remove said whisky elsewhere, upon the ground that it was being stolen, which requests were refused by said Faris, upon the ground that he had no authority for doing the same. There was not a sufficient demand at Huntsville for whisky to place the whole lot on the market at one time, and the agent could force only about six or eight barrels per month on the market. It also appears that the agent informed Mr. Ramsey, the collector, that the whisky was being stolen, and he asked him for permission to ship the same elsewhere, which was refused. It also appears that the cooperage and material of the barrels containing said whisky were excellent, and the whisky could not have been lost from leakage.

The agent proves that in May, 1867, all of the barrels were full of whisky, except a small deficiency, caused by evaporation, in each barrel. He further proves that when he finished selling it in December, 1867, said forty-eight barrels had only yielded about nine hundred and fifty gallons, all told. Said agent further proves that he sold said whisky at the rate of $3.25 per wine-gallon, realizing therefrom, after paying storage and charges thereon, $2,777.27. He further proves that he paid all of said sum of $2,777.27 to Collector Ramsey and his deputy in Lincoln County, S. T. Farrar. The vouchers for the payment of the amount are filed with the papers. It further appears that the charges and commissions for selling the same amounted to about $300. It also appears from the testimony of J. S. Alexander that he was employed to convey said whisky from the distillery in Lincoln County, Tennessee, to Huntsville, Ala., a distance of about twenty-five miles, and that he did deliver the same to the firm of Neil & Sprague in good condition, and with the barrels all full of whisky, for the purpose, on the part of Alexander & Co., of having it shipped in a day or two to Memphis, Tenn., and that the same was seized a few days after its delivery.

It appears that after the payment of the $2,777.27 taxes to the government, a balance remained unpaid of $1,444, that amount being the deficiency of tax; which latter amount, after being suspended in collection by the government for six or eight years, was revived and pressed for collection, as your committee believe, through the selfishness of the informer, who seemed to be willing to sacrifice the property of the distillers, who had been acquitted of any fraudulent intentions by the government officials, in order to obtain his moiety, as he uses this language in his communication to the Commissioner: "Self is, nevertheless, a subject of concern in this connection." Opposed to this, the claimants insist that, after deducting said $1,444, the government is equitably and justly indebted to them in the sum of $3,207, with interest thereon, say, from January 1, 1868. In a transaction between private citizens, *your* committee are of opinion that the claim of Alexander & Co. would

be a valid, equitable set-off against the collection of such a claim as the government proposed to enforce against them. The government, after the seizure of said whisky, took it from the dominion and control of the distillers, and became a trustee, first, to apply the proceeds to the payment of the taxes due thereon, and, second, to hold whatever balance remained in trust for the benefit of the distillers.

The committee are satisfied that while the government, through its agent, had possession of said whisky, a large quantity of the same was stolen, or in some other way lost, and that the loss cannot, upon any principle of equity, be visited upon the distillers; that the government would be estopped from inflicting such a loss upon the distillers, because it was the occasion of the loss itself.

Notwithstanding the claimants had lost the whole of their whisky through the action and default of the government officials, the revenue collector of the fourth district of Tennessee, the successor of Joseph Ramsey, who was the collector at the time of the removal of the whisky from Lincoln County to Huntsville, finding that there was a supposed balance of tax remaining unpaid, notified Hon. D. D. Pratt, Commissioner of Internal Revenue, of such fact, and after correspondence on the subject the collector was permitted to issue his distraint-warrant, bearing date January 21, 1876, directed to W. B. Nicks, deputy collector, who resides in Lincoln County, Tennessee, instructing him to distrain property of the claimants to the amount of $2,984.32, which included the tax, interest, and damages, and said deputy collector distrained the property of E. L. Allen, one of the claimants, consisting of sundry town lots and tracts of land in Lincoln County, valued, as is alleged by the claimant, at something like $10,000; and, after giving notice, the said deputy collector, Nicks, exposed the same to sale, the claimant, Allen, protesting against the right of the government to make such sale. The Commissioner of Internal Revenue declined to suspend the sale, and the claimant was forced to apply to Congress for relief or sue the collector on his official bond.

Believing that Congress would be willing to protect him against the hardships of the case, he has seen fit to make this application to Congress. The mere statement of the facts of the case, that the government got the proceeds of the whole forty-eight barrels of whisky, and has since sold, say, $10,000 worth of the real estate of one of the claimants, thereby reducing him to penury and leaving him without a home to shelter his family, would be manifestly a hardship, alike unjust and unconscionable, and your committee feel that it would be only a partial indemnity to the claimants to refund the balance of the tax, damages, and costs, amounting to about $3,000, which the government realized in the sale of said property. In a court of equity the claimants would have been entitled to all the balance of the value of the whisky remaining after the payment of the tax, which excess in their favor the proof shows to be from $3,000 to $4,000.

But inasmuch as the claimants ask only to have the amount remitted or refunded which was collected by the government in the sale of said property, your committee do not feel authorized to go beyond the amount asked for at the hands of Congress, and they are content to recommend the payment of the $3,000 demanded in the bill for their benefit.

Your committee think it proper to state that the real cause of the seizure of said whisky grew out of the collector of the fourth revenue district of Tennessee, Joseph Ramsey, granting a permit to the claimants to ship the same from the district before the payment of the taxes. The revenue collector took the written obligation of the claimants to

pay the taxes when they had shipped the whisky and sold the same in Memphis, Tenn., at the same time giving them a receipt acknowledging the payment of the taxes. The collector, in a letter addressed to the Commissioner of Internal Revenue, dated May 28, 1867, in explanation of his conduct, after describing the embarrassments in the execution of his duties, says:

> In this state of things, in order to enable the manufacturer to dispose of his whisky for consumption, so they could realize the money and pay the taxes, said whisky never having been in public bonded warehouse, Class B, and understanding that in most places in Alabama and Mississippi there were no public bonded warehouses to send it to, we did not see how we could do better than to permit the owners to transport their whisky under their own private bond, with security for the taxes in thirty days, feeling that by their bond we had the tax secured.

The then Commissioner of Internal Revenue, E. A. Rollins, in a letter addressed to the collector, Joseph Ramsey, says:

> I am of opinion, from all the evidence before me in this case, that Alexander & Co. are not so much in fault in this matter as the revenue officers in your district. The apparent fraud seemingly arises rather from neglect or want of knowledge of duties on the part of officers than fraud on the part of Alexander & Co. From all the facts that are before this office, I have decided to release the spirits of Alexander & Co., if, in your opinion, they have not knowingly violated the law.

It appears from this that the question was determined by the proper department, which is conclusive against the government as to the good faith of the claimants, leaving nothing but the real question of equities to be adjusted between the government and these parties for the loss of the whisky while in the possession of the government, to which the claimants were subjected as set forth. And the committee are of the opinion that relief should be granted, and report the accompanying substitute for the bill referred to them, and recommend its passage.

46TH CONGRESS, 2d Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 1746.

FISHERY PROVISIONS OF THE TREATY OF WASHINGTON.

JUNE 9, 1880.—Recommitted to the Committee on Foreign Affairs and ordered to be printed.

Mr. COX, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6453.]

The Committee on Foreign Affairs, to whom was referred the message from the President of the United States communicating certain correspondence with the Government of Great Britain in regard to the alleged outrages on the American fishermen at Fortune Bay and the province of Newfoundland, and also House bill 6242 "relating to certain provisions of the treaty of Washington," introduced by the Hon. Mr. Loring, of Massachusetts, report the accompanying substitute for said bill, for which they ask the favorable consideration of the House.

The preamble of the bill has five several recitals. As to these there can be no controversy.

The first recites the provisions of the treaty of Washington of 1871, as to the liberty of inshore fishing. The second recites the meeting of the commission at Halifax, and the object thereof, under said treaty. The third recites the award to her Britannic Majesty of $5,500,000, as compensation paid by the United States for the freedom of the fishery. The fourth asserts the fact that the fishermen of the United States were driven by unlawful force from the fishing grounds in which such freedom of fishery had been granted, and asserts the refusal of redress therefor. It recounts the pretended justification thereof in the local legislation of the province of Newfoundland, restrictive and violative of such liberty, notwithstanding the plain provisions of the treaty. The last recital indicates the discord between the two governments which celebrated the treaty.

The enactments of the bill are intended to provide the best remedy now possible for the wrongs inflicted. These remedies consist in the imposition of duties on fish-oil and fish produced by the fisheries of the Dominion, including Prince Edward Island and Newfoundland. The second section of the bill provides for a discontinuance of such duties in case an accord be established between the two governments. The third section provides for a Presidential proclamation to restrain our citizens from the exercise of their right to fish until the accord be established. The fourth section provides for a proper audit of the claims of fishermen by reason of the violence at Fortune Bay on January 6, 1878, and appropriates money therefor.

The committee refer to the message of the President and the accompanying letter of the Secretary of State, as well as to the documents accompanying the President's communication to the House of Representa-

tives in reply to their resolution of April 27, 1880, for a detailed state ment of this vexed question.

This committee has already reported to the House a resolution for the abrogation of the fishery clauses of the treaty of Washington. This abrogation may, in one regard, be accomplished by the mode prescribed by the treaty. Notice is required to be given, and by the provisions of the treaty it cannot be annulled formally until 1885.

This remedy seems to be too remote, inconsequential, and almost futile to remedy the wrongs which our fishermen have suffered. By a bold, violent, and outrageous infraction of the terms of the treaty, as illustrated in the repulse of twenty of our vessels, the destruction of their seines, and the loss of their ventures at the Fortune Bay in January, 1878,—the advantages of the treaty, for which we paid and are paying so much, have been nullified.

It is evident from the facts that a new adjustment of the fishery relations under the Washington treaty is necessary. But before that adjustment can be had by canceling that part of the treaty itself, certain other measures are indispensable. They should be promptly taken by Congress in aid of the President's vigorous and patriotic remonstrance. This Congress will be responsible if we fail thus to vindicate cur undoubted rights and dignity.

The rights conceded by this treaty in the 18th article are as follows:

> That inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores, and in bays, harbors, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also Magdalen Islands, for the purpose of drying their nets and curing their fish: provided, that in so doing they do not interfere with the rights and private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose. It is understood that the above applies solely to the sea fishery.

From the terms of this article it will be seer, that the liberty to take fish of every kind, except shell-fish, is conceded to our people *on the sea coasts and shores*, as well as the bays, harbors, and creeks of the provinces. No more comprehensive language can be used to give an undivided interest to the inhabitants of the United States, along and equal with those of Great Britain, in this adventurous and hazardous business. Every interpretation of these rights in the Halifax Commission and in the correspondence, including the "Case" made by Her Majesty's Government, confirms the views of our administration—that without such permission to fish on the "shores" the practical use of the fisheries is impossible. Without such permission, we paid for nothing. We bought back what we unwisely relinquished or failed to defend in 1818, and the delivery has been withheld.

For reasons not necessary here to state, the equal participation in the fisheries, which was conceded to us by the sovereign power of Great Britain, was considered at Halifax to be so immensely valuable, that $6,000,000 was claimed from us for it. Of this 20 per cent. was esti mated as net profit on $1,200,000. It was urged at Halifax, as one reason for the enormous award which our government was in too great haste to pay, that not only had we in the present an enormous advantage, but in the future a splendid prospect, by which our enterprise might be aggrandized and our wealth and industries increased.

What, then, was the surprise of the American Congress and people, when, after appropriating and paying the five million five hundred thousand on this dubious award, made under circumstances which require close diplomatic scrutiny and urgent demand, that we had paid our money and mitigated our tariff for Dominion fish, only to receive no returning consideration. True, the British minister, Lord Salisbury, just before he received our millions, was exceedingly complaisant. He signified, in no ambiguous style, that British sovereignty, as regards these matters, was only limited in its scope by the engagements of the treaty of Washington, and that these engagements could not be modified or affected by any municipal legislation. But as soon as the money was paid a different tone prevailed. A new interpretation, as the concomitant and justification of violence, pervaded the British correspondence.

It is a singular fact connected with this affair, that while the occurrence of Fortune Bay was in January, 1878, and while in March of that year our government demanded an explanation and asserted its rights, the British government did not respond until September 4 of the same year.

What then was their answer? Upon this answer depends the reason for the legislation proposed by the committee. The grounds were that our fishermen infracted a law of Newfoundland as to fishing on Sunday, which was passed subsequent to the treaty of Washington; that they used seines to take herring contrary to a law of that province, which prescribed the methods of fishing for six months of the year between October and April; and that they had the audacity to use seines in a manner prohibited by provincial statute, or by a codification of all their provincial laws made after the treaty. The English minister justified the violence against the American fishermen by a charge that they had committed three distinct breaches of a law of that province.

If it had been the provincial government or that of the Dominion which was the treaty-making power, or if the treaty had recognized the existing provincial laws or the right to enact such fishery laws thereafter, it might have changed the logic and situation. But it was the sovereign government of Great Britain which made the treaty, without reservation as to local legislation, by which was justified this wanton violence. Our treaty relations are, therefore, made to depend on provincial restraints, regulations, and statutes, not only in force at the time of the treaty, but those enacted afterwards; and by a similarity of reasoning, by all statutes, rules, and regulations enactable at the pleasure of the provinces. This cannot be tolerated.

In these particulars, therefore, our fishermen were denied their rights under the treaty. These rights consisted in an enjoyment with the British inhabitants, authenticated by a common or joint authority which was supreme above provincial law.

The committee believe that no power, not even the British imperial authority, could thus wrongfully restrain the rights acquired under the treaty. So believing, they report that so much of the consideration not yet given by the United States for the benefits and privileges of that treaty shall be withheld until the two supreme governments are agreed as to the interpretation of the treaty.

Without discussing the failure and lack of consideration paid for our fishery freedom, which in treaties as in private contracts unbinds the injured party, it will be conceded that, in addition to the five million five hundred thousand dollars, paid in money, equivalent rights were granted to the British inhabitants for fisheries on our own coasts; and,

second, an exemption of the provincial fish products from duties, giving to the Dominion an absolutely free market for fish and fish oils in the United States. If it be said that the bill reported by the committee is a violation of the fishery clauses of the treaty, which allows free fish to come into the United States, it may be answered that the violent infraction of that treaty at Fortune Bay destroys the very object for which these immense considerations were granted and paid. Since it is not possible, except by diplomacy, to recover the $5,500,000 paid to the British Government for the now valueless concession; since we do not propose to take away the concession to the British inhabitants who desire to fish on our shores; one thing remains to be done by this Congress, which is entirely consistent with international law and the decisions of our Supreme Court.

The decisions of our highest law tribunal go so far as to say that in all matters within the purview of Congress, as for instance the tariff, as on hemp in the case of Tyler *vs.* Morton (Curtis's Repts., vol. 2, p. 454), no treaty should intervene to prevent the action of the Federal legislation as to imposts on foreign articles.

The question as to the right of the treaty-making power to affect duties on imports is not a new question. The Constitution in delegating such a power did not, however, interfere with that of Congress to regulate commerce and to impose duties. It is not necessary to discuss here and now how far Congress may participate in the matter of reimposing duties on fish, which were made free by the Washington treaty, as whatever power the Federal Government had to make the treaty as to imposts may of right be controlled by Congress. This part of our constitutional duty it is now proposed to assume by the bill reported. No one can question the power of Congress to control the revenues to be derived from fish and fish oil.

As to international law, the violence by which the treaty was boldly broken at Fortune Bay, as well as the antagonistic legislation of the provinces by which it was justified, would be a serious complication, if not a *casus belli*. In the absence of reparation and harmony, no other relief is possible for such infraction, except by reprisal, letters of marque, or *via facti*, known to the law of nations.

The violation of any one article of the treaty is a violation of the whole treaty: for all the articles are dependent on each other, and one is to be deemed a condition of the other. A violation of any single article abrogates the whole treaty, if the injured party so elects to consider it. This may, however, be prevented by an express stipulation, that if one article be broken, the others shall nevertheless continue in full force. If the treaty is violated by one of the contracting parties, either by proceedings incompatible with its general spirit, or by a specific breach of any one of its articles, it becomes not absolutely void, but voidable at the election of the injured party. If he prefers not to come to a rupture, the treaty remains valid and obligatory. He may waive or remit the infraction committed, or he may demand a just satisfaction. *Lawrence's Wheaton, part iv, chap. iv, p.* 887.

Vattel, in his chapter (XV) on the "Faith of Treaties," after considering their sacredness, says, however, that they are no better than empty words if nations do not consider them as respectable engagements—as rules which are to be inviolably observed by sovereigns, and held sacred throughout the whole earth. Upon this observance depends the safety and repose of nations; and, as a conclusion, he remarks that he who violates his treaties violates at the same time the law of nations. He who makes sport of such solemn sanctions is to be treated, not as an enemy merely of the injured party, but of the human race.

Phillimore holds that it has been made a matter of dispute with respect to treaties whether a change of circumstances subsequent to the treaty

does not operate to the defeasance of the treaty itself. If so, *a fortiori*, a violent change, a disruption of such relations provided in any article of the treaty which defeats its object, leaves the treaty itself voidable at the election of the injured party.

The committee do not propose that this country, after paying so much, should waive or remit the infraction; but it proposes that not only should there be a claim presented for the return of the $5,500,000, and a demand for the satisfaction of the losses at Fortune Bay, but that there should be a prompt reimposition of the duties on fish and fish oils, which all countries except the Dominion have continued to pay into our Treasury.

The committee have not thought proper to consider such ultimate and portentous means and issues as look to reprisal or collision. All they propose is what their bill proposes: That in the absence of agreement between the two governments as to the interpretation of the treaty and as to the effect of these provincial statutes and regulations, the great boon given to Dominion fishermen of a free market to the United States for their fish or fish-oils should be withheld. In ordinary cases, perhaps, the Committee on Foreign Affairs would not increase the revenues of the government by any additional tariff on any commodity, and much less when that commodity, which is a source of food, may be enhanced in price. It is not a matter in question whether fish will be cheaper or dearer by reason of the re-enactment of the tax on fish from the Dominion. It is a matter of patriotic respect and interest, when great advantages were given to the Dominion and the immense sum of $5,500,000 paid, and the great exceptional privilege given to bring their fish into our market free, that the object for which we paid this sum and bestowed these privileges shall not now be allowed to turn to ashes. It would be a national humiliation, for which there is no material or moneyed equivalent, to allow such an audacious infraction by mob violence, under the cover or color of mere provincial legislation, backed by British imperial authority, without our using every remedy.

The United States can no more deal with these provinces than Great Britain can deal with New York or Massachusetts. They know only one party to the treaty of Washington, namely, the imperial government. When the imperial government made this treaty, everything inconsistent with that treaty, either provincial regulations or statutes, were annulled by the treaty, and everything possible to be enacted after the treaty, were to be subordinate to the clauses of the treaty. When, therefore, our fishermen lost $103,000 in the destruction of their seines and their venture, it is not only a case for reclamation against the British Government, but it is a case which puts us on our best endeavor to prevent any possible recurrence of such outrage. In fine, the circumstances make it the indispensable duty of our government to withhold every consideration possible, not yet completed, in order to bring the Dominion or the British Government to the observance of the treaty.

It may be that a restoration and even monopoly of the domestic market for the products of our own fish industry will do something to aid our own fisheries. Of that the committee does not propose to take any account.

When Great Britain or the Dominion choose a commission organized to consider the questions as to reciprocal trade between the United States and the Dominion, such as this committee have reported, it will be time to listen to their demands as to fish and all other articles. Thus, mutuality in the commerce of the two countries may have more prompt attention and relief.

The issue, as stated by the Secretary of State, between the two governments is this: Shall there be provincial sovereignty over our fishery relations under the treaty, after the exclusive sovereignty of that subject has been parted with by the Government of Great Britain?

The United States having acquired a participation in such fishery by paying the consideration fixed by the treaty, how can the British Government claim, as Lord Salisbury did on the 3d of April, 1880, that these provincial regulations which were in force at the time of the treaty still remain in full force; and especially how can they make such claim when the very minister himself acknowledged "the incompetency of the colonial or even imperial government to remit by subsequent legislation the advantages secured by the treaty to the subjects of another power"?

The freedom for which we have paid, should neither be curtailed nor burdened. What we acquired from Great Britain under the treaty was neither subject to the will of the provinces nor to the will of Great Britain Having been fixed by treaty, it should not be arbitrarily and forcibly annulled. If Great Britain had the power to dispose of her right, then we had from her the privilege of the shore fisheries. Our right is then equal to hers. There is no power except brute violence, to despoil us of that privilege which we have so abundantly and inordinately paid for.

The power of Great Britain over this subject was plenary. That plenary power was exercised not merely to obtain an immense sum of money which she has distributed among the provinces, and one million of which was received by Newfoundland itself, but by the same authority we were made coparceners in the advantages of this freedom to fish on her sea coasts and shores.

Our citizens being, therefore, debarred from the enjoyments of the rights to which they were entitled under the treaty of Washington, not only have they a just claim for redress to the amount of their damages which our bill proposes to ascertain, but we have a right to withhold any one of the considerations which we yielded for the advantages thus denied. As nothing is given for the advantages we supposed we had received, so nothing should be left undone to rescue whatever we can from the grasp of these provincial law and treaty breakers. The committee therefore submit the accompanying bill and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1747.

SURVEY OF MINERAL LANDS.

UNE 10, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Ir. STEVENSON, from the Committee on Mines and Mining, submitted the following

REPORT:

[To accompany bill H. R. 5635.]

The Committee on Mines and Mining, to whom was referred House ill No. 5635, respectfully report back the same with certain amendents, with a favorable recommendation. The bill reported is substanially that prepared by the Public Land Commission appointed under act f March 3, 1879. A full explanation of the provisions of the bill will e found in the report of the Public Land Commission, which is hereto ttached:

MINERAL LANDS.

The United States mining laws of 1866 and 1872 are directly descended from the lo-al customs of the early California miners. Finding themselves far from the legal raditions and restraints of the settled East, in a pathless wilderness, under the fever-sh excitement of an industry as swift and full of chance as the throwing of dice, the dventurers of 1849 spontaneously instituted neighborhood or district codes of regula-ions, which were simply meant to define and protect a brief possessory ownership. he ravines and river-bars which held the placer-gold were valueless for settlement r home making, but were splendid stakes to hold for a few short seasons and gamble ·ith nature for wealth or ruin.

In the absence of State or Federal laws competent to meet the novel industry, and ·ith the inbred respect for equitable adjustments of rights between man and man, ·hich is the inheritance of centuries of English common law, the miners only sought) secure equality of rights and protection from robbery by a simple agreement as to he maximum size of a surface claim, trusting, with a well-founded confidence, that no iachinery was necessary to enforce their regulations other than the swift rough blows f public opinion. The gold-seekers were not long in realizing that the source of the ust which had worked its way into the sands and bars, distributed its precious par-icles over the bed-rocks of rivers, was derived from solid quartz veins, which were hin sheets of mineral material inclosed in the foundation rocks of the country. Still, ı advance of any enactments by legislature or Congress, the common sense of the iners, which had proved strong enough to govern with wisdom the ownership of lacer mines, rose to meet the question of lode claims, and decreed that ownership hould attach to the thing of value, namely, these thin sheet-like veins of quartz, and hat a claim should consist of a certain horizontal block of the vein, however it might un, but extending indefinitely downward, with a strip of surface on or embracing the ein's outcrop, for the placing of necessary machinery and buildings. Under this heory the lode was the property, and the surface became a mere easement.

This early Californian theory of a mining claim, consisting of a certain number of nning feet of vein with a strip of land covering the surface length of the claim, is ie obvious foundation of the Federal legislation and present system of public dispo-tion and private ownership of the mineral lands west of the Missouri River. Con-rasted with this is the mode of disposition of mineral-bearing lands east of the Mis-ouri River, where the common law has been the one rule, and where the surface ract has always carried with it all minerals vertically below it.

The great coal, iron, copper, lead, and zinc wealth east of the Rocky Mountains ave all passed with the surface title, and there can be little doubt that if California ad been contiguous to the eastern metallic regions, and its mineral development pro-

gressed naturally with the advance of home-making settlements, the power of common-law precedent would have governed its whole mining history. But California was one of those extraordinary historic exceptions that defy precedent and create original modes of life and law. And since the developers of the great precious metal mining of the far West have for the most part swarmed out of the California hive, California ideas have not only been everywhere dominant over the field of industry, but have stemmed the tide of Federal land policy and given us a statute-book with English common law in force over half the land, and California common law ruling in the other.

Your commissioners have examined typical mining localities in all the far Western States and Territories, studying the metalliferous deposits, the character and mode of developing the same, the titles on which ownership rests, and the lines of litigation which have governed the attacks upon and defense of mineral property. It has been our main purpose in this branch of inquiry to determine how well the laws now upon the Federal statute-book convey into private ownership portions of mineral-bearing public lands, and how well the grantees of the government are enabled to hold, enjoy, and develop their properties. While in a large class of cases your commission finds that the law conveys definite rights and protects the grantees, in a far larger class it simply bequeaths a piece of paper and a legal contest.

We find an extraordinary and characteristic difference between the mineral development east of the Missouri and that west. The first is almost absolutely exempt from litigation growing out of conditions of the government conveyance. The other is a history of the most frequent, vexatious, costly, and damaging litigation.

While the total litigation concerning mineral titles in the great copper and iron region of Lake Superior is represented by a single suit, which turned on a conflict between two titles granted respectively by the State and the government, the dockets of the far western courts are cumbered with an excessive number of suits, involving many million dollars of value. In that region the investor of capital too often buys only a lawsuit, with a possible mine thrown in, and finds himself forced to choose between an expensive legal defense of his rights or robbery. That the mineral industry advances and prospers in the face of the statutes is proof only of the wealth of the country and the buoyant energy of the people.

There are two general features in the existing statutes which have provoked and directed the main lines of legal contest, and they are, first, the recognition by the law of the local customs and regulations; second, the attempted conveyance of a lode, ledge, or deposit of rock in place bearing mineral as a thing separate from and independent of the surface tract of ground, with the permission to follow such lode or deposit on its dip, even when in the downward course it passes beyond the side lines of the surface claim.

The law leaves all the conditions as to location, notice, record of location, and area of claim within certain wide limits to local regulations. That is to say, the government proposes to convey a portion of its public land, and bases the very origin and initiation of that conveyance on the acts of an official wholly outside its jurisdiction.

Title after title hangs on a local record which may be defective, mutilated, stolen for blackmail, or destroyed, to accomplish fraud, and of which the grantor, the government, has neither knowledge nor control. In the testimony taken by your commission it was repeatedly shown that two or three prospectors, camped in the wilderness, have organized a mining district, prescribed regulations, involving size of claims, mode of location, and nature of record, elected one of their number recorder, and that officer on the back of an envelope or on the ace of spades, grudgingly spared from his pack, can make, with the stump of a lead pencil, an entry that the government recognizes as the inception of a title which may convey millions of dollars.

From such extreme cases, frequent as they have been, there is a wide range of organization to the duly-elected county recorder, but even that official, who represents the most favorable working of the system, is not responsible to the United States. He is neither bonded nor under oath. He may falsify or destroy his record; he may vitiate the title to millions of dollars' worth of claims, and snap his fingers in the face of the government. All the local officers are made indirectly the agents of the government at the critical stage of a vast class of transactions, without an iota of responsibility or a syllable of instruction from the principal.

It is true that the statute of 1872 does not make a record obligatory nor does it define its effect. Miners at their meetings might draw the provisions of their code without mention or requirement of record, but practically they exercise the privilege which the statute does not inhibit, and create a record. Having, as is universally the case, made the record a part of their code, the Federal law, having recognized and enforced the code, is thereafter bound as to its conveyances by the record with all its preposterous seeds of harm.

Such Federal law and such a state of affairs as the law plainly necessitates would, it might be supposed, cure itself. The burden of litigation, the uncertainty of ownership, and the actual loss of property should have long ago brought the mining peoples

to a realization of the damage wrought by local records; but unfortunately the class of men who own our mines, fight the great costly lawsuits, and discover the absurdity of the law, are not the class who make the locations. The prospector's sole attempt is to follow the custom of other prospectors, make his location as other locations have been made since the golden days of early California, and sell out to a capitalist.

If the capitalists of London and New York, Chicago and San Francisco, had anything to do with mine locations they would clamor for a change.

The continuance of this early practice, which has survived not only its original necessity and usefulness, but every semblance of value, is perhaps due more than to all other causes to the excited, sudden, and transient character of the industry. The immediate returns, the movements of the stock-board to-day, the swift conversion of bonanza into bullion, are the points which absorb men. Permanent ownership and security of tenure are less considered. Like a great wheel of fortune, its dazzling prizes blind men to the sober legal conditions on which security depends, and, as a result, no branch of American enterprise has ever paid to litigation so great and so unnecessary a share of its gross returns.

One of the ablest jurists who has administered the mining laws, Chief Justice W. H. Beatty, of Nevada, argues conclusively that the local records are of no practical value, and hence there is absolutely nothing whatever to weigh against the crying evils which their continuance entail. On page 398 of the book of testimony, he says:

"It thus appears, if the foregoing statements are correct, that upon three out of four points subject to local regulation by the miners they make no use of their privilege, and that the regulations which they do make on the fourth point (namely, record), having no reason to support them, are simply useless and vexatious. If this conclusion is well founded, my first proposition is established, that the whole subject of lode locations is so simple that it not only may be, but actually is, fully regulated by act of Congress. That the right of local regulation ought to be taken away if it is of no practical value, is a plainer proposition than the first. The interest of the public would be subserved by cutting off a source of endless litigation, and the mining communities would be especially benefited by the enhanced value of mining property.

"The magnitude of the evil resulting from the uncertainty of mining titles will, perhaps, be appreciated when I say that after a residence of seventeen years in the State of Nevada, with the best opportunities of observing, I cannot at this moment recall a single instance in which the owners of really valuable mining ground have escaped expensive litigation, except by paying a heavy blackmail."

Besides the worse than useless permission to prescribe a record over which the government has no control, the law of 1872 leaves but two points which may be regulated by local organizations. It fixes the maximum dimension of the claim or thing granted, and it fixes the minimum requirements of survey, development, and payment upon which the claim may pass to the grantee.

Within these narrow limits is all the room left for local regulation. Miners may voluntarily limit their privilege of mineral pre-emption to an area less than the statute offers them, or they may require of themselves conditions more onerous than the law demands. With his eyes open the American citizen is somewhat unlikely to do either.

Your commission find that a large majority of the mining men consulted during the examination of the Western States and Territories clearly shared our conviction: first, that the local regulations are of no use; secondly, that they are a great positive harm; thirdly, that by Congressional enactment they should be promptly abolished as to all future locations.

Accordingly, in the code of legislation submitted herewith, it is directly provided that "all future occupation, location, or purchase of public mineral lands shall be governed by laws of Congress, to the exclusion of all local customs and regulations and State and Territorial law" (section 172); and a mode of location is prescribed which requires all the acts necessary to pass title for public mineral lands from government to the purchaser to be performed by the locator, his assign or agent, and the duly bonded and qualified officers of the United States.

The second great class of evils which our proposed law has sought to cure are those incident to the theory of the lode or ledge location. This outgrowth of the early Californian practice stands thus in the statutes of 1872:

"SEC. 2322. The locators of all mining locations heretofore made, or which shall hereafter be made on any mineral vein, lode, or ledge situated on the public domain, their heirs and assigns, where no adverse claim exists, on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, and ledges may so far depart from a perpendicular in their course down-

ward as to extend outside of the vertical side lines of such surface locations: but their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges."

The grant therefore consists, first, of a definite surface tract, which, if properly marked, need never become a subject of dispute; and, secondly, of all veins, lodes, and ledges without limit as to depth or departure beyond the side lines of the surface location, whose tops or apices lie inside the prism of earth bounded by vertical planes through the exterior boundaries.

But the lodes which are to be followed are not definite or limitable, and in the book of testimony Judge Moses Hallett, of Colorado, in a clear exposition of the impossibility of describing or identifying a lode, which is the valuable thing granted, remarks:

"It is safe to say that the greater part of the legal complications for which mines are notorious over all other property, grows out of the practice of dealing with lodes as distinct and severable from the earth in which they may be found. In condemnation of that policy it is only necessary to say that very many lodes have not that character, and of those that are pretty well defined it is often difficult and sometimes impossible to distinguish one from another. If we can return to the common-law principle, which gives to the owner of the surface all that may be found within his lines extended downward vertically, we should avoid hereafter fully one-half the controversies that now embacrass the mining interests of the country."

It has proved in practice and in law that a lode or ledge is an absolutely indefinite thing, and the act of following this formation, whose nature and limits cannot be fixed, beyond the locator's surface ground and under the surface ground of another owner, is the most frequent and vexatious cause of litigation.

The right of a locator to thus follow a lode into the ground of a second party works its minimum of mischief in the case of a well-defined fissure vein of regular course and dip, the mineral material and walls of which clearly define it from the surrounding rock, and which, by its smooth unbroken continuity from a visible apex or outcrop upon the surface down to its lowermost workings, show plainly the unity of the whole formation. In such cases, if attacked at law, the locator would in the end be able to prove that the ore or vein which, at the bottom workings, lay under the surface claim of a second party, was in truth the lode or ledge whose apex lay in his own ground and was the one granted to him.

With such a defined fissure vein, by spending many thousand dollars and provided his cloud of expert witnesses are not tripped up by clever cross-examination, and the judge is impartial, and the jury are not corruptly influenced against him, after many months and perhaps years, during which his enterprise has been handcuffed with injunctions and himself reduced to poverty, he might derive whatever hollow comfort he could of a victory which left him ruined.

From this somewhat favorable working of the law, your commission have gone on to the examination of another class of cases, in which the lode was not a simple fissure easily recognized at its apex, clearly defined from the inclosing rocks, and continuous without change or break, but a complex and indefinite body, without apex, so merged with the surrounding rock that its limits could not be fixed by science, and so extensive that no one surface claim could cover its outcrop, if it had one.

Ore deposits may be horizontal sheets interstratified with sedimentary beds. They may occur as scattered impregnations of metallic minerals disseminated without connection or system through broad zones of rock. They may consist of a main central ore body, with small dependent bodies, connected with the parent mass by minute threads or seams of vein material, or ore, so that one discoverer locates on the apex of the main body, and another locates on the apex of a dependent body. Both trace their way downward into a single ore chamber, each having honestly followed ore all the way from his "apex." In such cases murder sometimes, litigation always, ensues. Again, some ore deposits are so extensive and broad on the surface that two or more parallel claims may be located side to side across the outcrop; each has an apex, to each the government solemnly conveys his lode. On mining downward all find themselves in one lode, which rapidly narrows to the thickness of a sheet of paper, and contest ensues. This latter case might seem an expensive one to demonstrate, but on the "Comstock Lode" it cost three millions disbursed in litigation, and ten millions in underground development. The above cases, and others too numerous and complicated to adduce here, are the causes of innocent and unavoidable conflict, where, owing to the character of the deposit, the law brings honest neighbors to the point where they discover that the government has seriously sold them both the exclusive right to the same thing, and the courts have forced one honest purchaser to rob the other.

But there is still another, and, unfortunately, a lamentably numerous line of cases where the government sells a lode to one man, and by its laws invites a general, a frequent, even a promiscuous blackmailing and robbery of its grantee.

The existing law provides no administrative control over inspection of the alleged

discovery. The mere location and record of an alleged lode give valid possessory title whether there really is a lode or not, for it is never questioned till the proceedings for patent, and even then the existence of a lode is determined by *ex parte* affidavits without official inspection.

The line of adverse proceedings is this: One man locates an honest claim on the evident apex of a true lode. Fifty or a hundred tramps locate claims all around him and over him, burying his tract deep with thickly stratified possessory titles. Not one of the tramps has discovered a lode; he has simply marked out a piece of ground and paid the recorder's fee, bestowing some name upon his imaginary discovery. The tramp claim is obviously valueless for working, but he is in a position for a fee of five dollars to mine without the cost of muscle or plant. And where? Not on his alleged lode, but in the already coined earnings of his neighbor, the honest discoverer.

The blackmailer's method is simple and effective. Located over the dip of the honest discoverer he has only to say to him, "It will cost you less to pay than fight."

The robber method is somewhat bolder and less certain of success, but his prize is greater. He sinks through his worthless claim and cuts the honest locator's vein where, in the language of the law, they "so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines" of the honest claims. The honest miners are then in the hands of justice, which means injunctions, trials, expert testimony, juries, and an abominable waste of money.

Your commission, after a review of the lines of mining contests and a consideration of the complex nature of ore deposits, are unanimous in the conviction that any attempt on the part of the United States to convey such deposits as individual things beyond the vertical planes bounding the surface claim, must always end in a history of intolerable injustice.

The result of our test of public opinion shows that, while there are regions whose simple fissure veins have not caused battles, and where, consequently, the people ask no change, the majority of experienced mining men desire a change from the lode location, with its disastrous sequel, back to the security and peace of the solid old common law-doctrine. It is urged by opponents of this doctrine that this limitation will discourage deep mining. On that score we invite your attention to the following opinion: The Great Bonanza firm, after due reflection, submitted their views to your commission through their counsel, Judge B. C. Whitman, of Virginia City. His exposition of the operations of mining law is to be found on page 419 of the book of testimony. As a summary of his views on the subject of locations he remarks, on page 421:

"I think the square location (*i. e.*, common law) would have no injurious effect upon deep mining; on the contrary, I think it would improve it, have a good effect, always provided that the United States survey and fix the monuments. A man could go in there then feeling that he owned that piece of ground, and I think every prospector would be willing to avail himself of that, and go to work on that supposition. The history, so far as I know, of every mine and mining company is continued litigation and expense by adverse locations. With a square location there could be no litigation. Mining men would be more willing to invest in a square location than they would in what we call ledge locations."

Subterranean rights are terminated by vertical plains carried downward through the end lines of the claim. But in a very large class of ore deposits, the valuable bonanza or pay chimney does not descend on the line of the dip, where it may be legally followed beyond the side lines, but rakes off at a sharp angle and the ore chimney passes out through the plane of the end lines, where the owner cannot follow it. In such cases, he stands precisely where the common law would place him, save and except a permission to go down into lower ground.

Again, if, as is often the case, the course, and hence the dip, are not discoverable on the surface where the location was made, a man lays out the length of his claim, as he supposes, on the strike of the lode, and draws his side lines where he supposes the valuable deposit will pass out of his surface, giving the right to him to follow it; but on mining down, perhaps for years, he finds that he was mistaken, and the whole vein, instead of dipping through his side line, dips through the end lines, and the courts have held him to his unavoidable mistake.

The existing law holds out the conditions for obtaining patents. Having permitted an inception of title dangerously vitiated by acts of local agents outside of the Federal jurisdiction, having permitted a lode location with its indefinite conditions, having permitted the robbers and blackmailers to acquire a cheap and secure fighting title, the government then causes its unfortunate victim to set himself up as a target for attack by advertisement for patent, and when attacked calmly turns it back and permits him to be dragged into the local courts.

In short, the present law might be fitly entitled "An act to cause the government to join, upon unknown terms, with an unknown second party, to convey to a third

party an illusory title to an indefinite thing, and encourage the subsequent robbery thereof.

Briefly, miners' laws and customs were initiated from necessity, and in the absence of legislation. They naturally dealt mainly with the mineral to be extracted. The essence of their laws related to the lode. There was room enough for all, and the surface ground was not regarded as a definition of claim, but as an easement for the convenient working of the mineral beneath its surface.

As the mineral domain became occupied, conflict of locations naturally ensued. The necessity for some precise definition of rights then followed. Congress, however, simply acquiesced in the loose customs which had sprung from the necessity of frontier explorations in the absence of legislation. The definition of rights and the harmonizing of conflicting and obscure customs was remitted to the construction of the courts. Precisely as the railroad law of the country has, in the absence of legislation, grown out of the application by the courts of the law of common carriers by wagon and by boat to the great lines of railroad traffic, so the courts have been compelled to apply the varying customs of innumerable local districts to the increasing complications and development of a national mining industry. It has resulted that the surface location has by construction become the controlling factor, and the miner loses his lode when in its course it departs therefrom.

The Helen Tarbut decision by the Supreme Court of the United States lays down the latest rule of construction. It is not an unfair criticism to say, that, by judicial construction, the old miners' theories are, in partial and fragmentary form, being reduced to a quasi application of the common-law rule.

The commission has thought that the time has arrived when Congress should formulate the legislation to govern the changed conditions of an occupation which has passed from a frontier experiment into a national industry.

If mining is to be continued as an experiment, or for speculative purposes alone, an adherence to the existing customs is desirable. If it is to be continued as a business, upon settled principles and with expectation of legitimate returns, it should be governed by the same rules which the wisdom of centuries has formulated for the definition of all real-property titles.

The insecurity and hazard of the first system could be well followed by a continued relinquishment of Federal control over its own property, both in the inception of title and in the adjustment of controversies.

The certainty and security of the second system should be maintained by an assertion of the national jurisdiction over its own property in all stages of progress, until the title is vested in private ownership.

In the new law submitted for the consideration of your honorable body, we have attempted to preserve all the valuable and practicable provisions of the present statute, and sought to cure all its flagrant wrongs.

We have protected the prospector for an ample time to test his discovery, but we have fixed a limit to his possessory title; and thereafter, failure to tender purchase money shall work a forfeiture of the claim.

We have in terms abolished all the local organizations and regulations, reserving to the United States full jurisdiction over all questions, from location to patent.

We have repealed the lode location, and substituted the common-law rule in its stead.

We have, by a system of official survey and mineral inspection, prevented blackmail and robbery, and obviated those contests which necessitate the intervention of the courts before patent.

Your committee therefore recommend that said bill do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1748.

ILLUMINATING GAS IN LIGHT-HOUSES.

JUNE 12, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. BEALE, from the Committee on Commerce, submitted the following

REPORT:

[To accompany bill H. R. 5574.]

The Committee on Commerce, to whom the bill H. R. 5574 was referred, submit the following report:

An efficient system of lights is an essential factor in a successful commerce; and the want of proper lights upon the rivers and bays of the Southern Atlantic slope is to-day a hinderance and an obstacle to commercial enterprise. The finest harbor on the bay of Chesapeake, an inland sea, the navigation of which is fraught with almost as much peril as the stormy ocean, is practically closed during darkness because no friendly beacon marks the bar jutting out into the bay from its southern point.

Strongly impressed with a knowledge of the fact of a pressing need for more guides for steamers and sailing-vessels, your committee are anxiously alive to any advance of science and art that promises a cheaper and better system.

The one in practice is costly in its structures and expensive in its keeping and repair. From $10,000 to $60,000 is the cost of erection of our light-houses, with an annual outlay for keepers, fuel, attendance of inspectors, repairs, and supplies of not less than $2,000 each.

Copying that which has been satisfactorily achieved in England, this bill proposes to test the practicability of a new means of light the cost of which is claimed to be in construction as $1,000 to $20,000, and in repair, attendance, and fuel as $36 to $2,000 annually, for each light. The reduction in cost is so large that it seems to justify the necessary expenditure to obtain it if practicable.

Without any special information upon the subject, your committee, from a general knowledge of the principles now applied to many economical contrivances for lighting streets and dwellings, see no reason to question the success of that now proposed for lighting our inland navigation.

The plan proposed is the substitution of iron tubes in place of the light-house, fixed firmly in the bottom, and where exposed to drifts of ice such multiple of tubes as may give the required strength. These tubes are to be filled with compressed gas pumped in by steam-power; the gas to be manufactured on board the steam tenders now used for the inspection of lights. There is yet one difficulty anticipated in the successful operation of these tubes; and that is in so adjusting the

burner as to meet the different degrees of pressure by the gas as the tubes become gradually exhausted from its combustion. This it is claimed has been overcome in the English patent; and should the American device prove a failure, that of England may be substituted for it.

These tubes filled will burn continuously for twenty-one days, needing no keeper, and may be regularly refilled from the vessels now employed in the regular inspection of the lights. The cost of the gas consumed will be less than that of the oil now used by using it only by night.

It may be that, admitting this system in its details is perfected, still an objection to its adoption may lie in the danger of having the lights, if unguarded, extinguished by wicked or mischievous persons. Where, however, the benefits are so general and the motive so slight we do not think this objection should weigh.

Should the measure meet the approval of Congress, we deem it important that the government, before encountering the expense of the experiment, should be protected against any claims of the patentee for the use of his invention, and in reporting favorably for the bill your committee recommend an amendment to meet and provide for this contingency, which, with the bill, is herewith submitted.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1749.

DAVID FLYNN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6473.]

The Committee on Invalid Pensions, to whom was referred the petition of David Flynn, praying that a pension be granted him, have considered the same, and report:

The said Flynn was first sergeant in Company H, Third United States Infantry, and subsequently a hospital steward in the United States Army. He was in said service from 1858 to 1874, and served during the whole of the late war.

While in said service and in line of duty, he contracted "asthenia" and "valvular insufficiency of the heart," which completely prostrated him, and renders him incapable of obtaining a support by manual labor. These facts are fully proven by several witnesses, professional and lay.

The committee are of opinion that claimant should be pensioned, and recommend the passage of the accompanying bill.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1750.

REBECCA REYNOLDS.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6423.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6423) granting an increase of pension to Rebecca Reynolds, have considered the same, and report:

The said Rebecca Reynolds is the widow of the late William Reynolds, a rear-admiral of the United States Navy, who lost his life from disease contracted while in the naval service of the United States.

The petitioner is now receiving a pension at the rate of thirty dollars per month, which she claims is insufficient to support her in comfort, and it is alleged that she has no other means of support.

Petitioner's husband was a distinguished officer in the United States Navy during a long term of service. His services during the late war were exceptionally distinguished and brilliant. He was for a brief period acting Secretary of the Navy; and upon his death the Secretary of the Navy issued a general order of which the following is an extract:

> In the administration of the duties committed to him, Admiral Reynolds did much to improve the *personel* and efficiency of the enlisted men of the Navy; and in discharge of the duties devolving on him during a long career in the service he exhibited zeal, intelligence, and ability, for all which he was conspicuous.

In view of the above facts, the committee recommend the passage of the bill granting an increase of pension at the rate of fifty dollars per month.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1751.

MARY R. YEARGER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5175.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5175) granting a pension to Mary R. Yearger, have considered the same, and report:

The claimant is the widow of David Yearger, late a private in Company D, Fifty-fourth Regiment Pennsylvania Volunteers, who was a pensioner under certificate 45,786.

It appears that the said soldier was wounded in the hand at the battle of New Market, and for that disability he was pensioned. He afterward applied for increase of pension, alleging that he had consumption, the result of pneumonia contracted in the service. Before his application for increase was finally adjudicated the soldier died of pulmonary consumption.

The family physician of claimant's husband testifies that when he first knew Yearger, about 1870, he was completely broken in health and had consumption of long standing, the result of exposure and translated rheumatism, from which he died.

The soldier was in the service more than three years, and the committee think it is highly probable that during his long term of service the seeds of the disease were planted in his system; and as he was a pensioner during his lifetime, they think his pension should be continued to his widow. They therefore recommend that the bill do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1752.

JOSEPH E. VANHORN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6311.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6311) granting a pension to Joseph E. Vanhorn, have considered the same, and report:

It appears that the claimant was a veteran sergeant in Company B, Fourth Pennsylvania Cavalry, and was discharged for disability September 24, 1862.

He alleges that while in the service and in line of duty at the battle of Malvern Hill, Virginia, July 2, 1862, his horse was shot and fell with him, and thereby caused hernia of the claimant on both sides.

The surgeon's certificate of disability shows that the claimant was discharged on account of disease of the kidneys.

The claimant alleges that he was treated in hospital from July, 1862, till discharged, and that he has never recovered his strength or health which he lost in the service.

To sustain his claim the claimant adduces the testimony of a great number of persons, including his officers, comrades, and neighbors, all of whom testify to the fact of his present disability and its contraction in the service.

The Surgeon-General's Office has no record of the alleged injury, but states that he was treated in hospital for malarial fever, and was discharged for "nephritis."

Dr. Newmuller states that the claimant is badly ruptured and has been since his discharge.

Dr. W. F. Williams states that claimant was sound at enlistment.

The claimant is quite aged.

The claim was rejected upon a report of the special agent of the Pension Office sent to investigate the claim, who reported that all the witnesses he examined stated they did not know the origin of claimant's disability.

The committee have no hesitancy in pronouncing this a meritorious case, and recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1753.

GEORGE KNOPSNYDER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. COFFROTH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3576.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3576) granting a pension to George Knopsnyder, have considered the same, and report:

The said Knopsnyder was a private in Company H, Two hundred and eleventh Regiment Pennsylvania Volunteers. It is alleged that while in said service, and in line of duty at Bolivar Heights, Maryland, he was taken violently ill with fever and went into spasms and was sent to hospital, and that after being there a short time he was found to have double inguinal hernia, caused by the violence of the spasms through which he had passed.

The report of the Adjutant-General shows that this man was enrolled in September, 1864; that he was sent to hospital in November of that year, with pneumonia and typhoid fever, and remained in various hospitals until mustered out in September, 1865; and the hospital record states that he did not join his regiment on account of rheumatism.

Valentine Soss and John Sellwig testify that they know claimant was a sound man when enlisted, and free from hernia.

Mathias Bowman and Simon Deal, comrades, testify that while at Bolivar Heights, Maryland, in 1864, claimant was taken sick with fever and had severe spasms, and was sent to hospital; that up to that time he was a strong healthy man and free from hernia, and that since his discharge he has not been able to perform a day's work on account of double inguinal hernia, caused, as they believe, by the great severity of the fits.

Several other witnesses testify that claimant is at this time unable to perform manual labor.

The committee are of opinion that the claimant is entitled to pension, and recommend that the bill do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1754.

A. T. STILL.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5113.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5113) granting a pension to A. T. Still, have considered the same, and report:

That A. T. Still was major of the Twenty-first Regiment Kansas State Militia from the 10th day of April, 1863, till honorably discharged, October 24, 1864.

He alleges that while in said service, and in line of duty, on forced march on the Price raid, from hard marching and the pressure of ammunition and arms on the bowels, and continued action in battle for three successive days, he was ruptured on left side, and also contracted disease of the heart, which occasioned a disability that is permanent, and incapacitates him from the performance of manual labor. He further states that he was treated for said rupture by himself and by the regimental surgeon.

Sandy Lowe testifies that he was colonel of said regiment, and that while on the Price raid, from the pressure of arms and ammunition upon his bowels, claimant contracted rupture, and that from his participation for three days in battle he contracted heart disease, all of which occurred in October, 1864.

J. M. Still testifies that he was surgeon of said regiment, and that the claimant, in October, 1864, near Kansas City, Mo., from hard marching and the pressure of arms and ammunition upon his bowels, contracted hernia of right and left sides, and in the subsequent engagement with the enemy of three days he contracted heart disease, and that he treated him therefor as surgeon of said regiment; and he further states that prior to that time claimant was in good health and perfectly sound.

Dr. J. G. Snelly testifies that he treated the claimant for heart disease from 1866 to 1878; that he was afflicted with valvular leision of the heart, with syncope when asleep while lying on the left side; and he further testifies that claimant is ruptured on each side, with tendency to paralysis of left side and arm, and that during the whole time he treated claimaint there was no improvement in his condition.

The claim was rejected because the War Department contains no rec-

ord showing that the Twenty-first Regiment Kansas State Militia was in the United States military service.

In the papers is the commission of claimant as major of said regiment, signed by the governor of the State of Kansas.

In view of these facts, the committee report the bill back to the House with a recommendation that it do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1755.

REBECCA HALL.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 2731.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 2731) granting a pension to Rebecca Hall, have considered the same, and report:

The said Rebecca Hall is the widow of George R. Hall, who was a private in Company C, Forty-eighth Missouri Volunteers, from the 20th August, 1864, till discharged, June 29, 1865, and who died of disease alleged to have been contracted in said service March 12, 1875.

The declaration for pension states that the claimant's husband, while in the military service aforesaid, contracted the disease of mumps, which resulted in partial paralysis, rendering him unfit for service and unable to maintain himself by manual labor.

Samuel D. Smith and G. W. Smith testify that they were well acquainted with George R. Hall, and that when he returned from the service he was suffering at that time from the effects of the disease from which he afterwards died, and was entirely unfit to perform any kind of labor, "being drawn to one side and to some extent paralyzed, having but little use of his legs," and they further say, that his condition remained unchanged till December, 1864; during the whole time he continued unable to walk erect and was compelled to use a cane, and for weeks at a time unable to walk at all.

A. R. Forkner and Minerva Forkner testify that they saw the said soldier during the war, in November, 1864; that he was then in fine health, and that when they next saw him, in 1873, his health was entirely broken, and state his then condition to be as stated by the above two witnesses.

Francis Hall and A. Hall state that the soldier died of disease contracted in the service; that before his enlistment in the Army he was a strong healthy man and free from disease; that his service in the Army broke his health.

Dr. Hiram Waller states that he first became acquainted with the soldier in 1871; that he was then unable to perform any manual labor, and the said doctor states that he at that time treated him professionally; that he had at that time a spinal affection and kidney disease, and that it was incurable.

Dr. Campbell makes the following statement: "I attended George R. Hall, at or near the mouth of the Illinois River, in Illinois district,

Cherokee Nation, who was afflicted with typhoid fever, complicated with dysentery; he died on the 12th day of March, 1875. His case was under my treatment, according to the best of my recollection, four or five days. I am of the opinion that his constitution was worn out by previous illness."

The War Department shows that the soldier was frequently treated in hospital during his service in the Army, but contains no particulars as to his disease.

The claim was rejected because, in the opinion of the Commissioner of Pensions, the disease of which the soldier died was not incident to his Army service.

The committee are of opinion that the claimant is entitled to pension, and recommend that the bill do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1756.

RALPH P. FORD.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1672.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1672) granting a pension to Ralph P. Ford, have considered the same, and report:

The said Ford was a private in Company K, Third Missouri State Cavalry, from the 2d day of September, 1863, till discharged, July 13, 1865.

He alleges that while in said service and in line of duty he contracted chronic hepatitis while scouting in the swampy regions of Southeastern Missouri in the month of March, 1864; that he is still afflicted with said disease, and is unable, on that account, to obtain a subsistence by manual labor.

Lieut. Enoch Pope testifies that claimant was sound when enlisted and free from the disease for which he was discharged; and that claimant contracted the disease for which he claims pension in the military service of the United States by reason of fatigue and exposure incidental to the same.

Claimant affirms that he is unable to procure the testimony of his regimental surgeon, because he does not know where said surgeon now resides.

Dr. Glen testifies that he has critically examined claimant and finds him with hepatitis of long standing. In another affidavit he stated that he had been well acquainted with claimant for six or seven years; treated him in 1868 for disease of the liver; disability had continued up to that time—January, 1879—as far as he could determine. He says claimant is a physician in good standing and has treated himself.

Dr. Henry J. Smith testifies that he has critically examined claimant and finds him diseased by hepatitis of long standing.

Dr. Edward Hubbard testifies that in 1866 and 1867 he treated claimant for disease of the heart and lungs; and he also states that he treated him during the same time for the particular disease for which he claims pension.

Lieutenant Pope testifies that he has been intimately acquainted with claimant since his discharge in 1865, and knows he was suffering from chronic hepatitis after his return from the Army. He also states claimant treated himself for some time after discharge and is now in very bad health.

The War Department contains no record of the alleged disability.

Dr. Patrick Gilroy certifies under date January 15, 1870, that claimant's disability is total and continuous "chronic hepatitis, with enlargement of the left lobe of the liver, extending to the mesian line of the abdomen and considerably below the false ribs; tenderness on percussion over the whole region of the liver. There is sallowness of the complexion, languor and lassitude, and remarkable depression of spirits; there is chronic constipation with occasional severe attacks of diarrhea, the sequel of chronic diarrhea contracted by exposure in line of duty."

The claim was rejected because it was barred under section 4717, Revised Statutes, which has been repealed.

The committee therefore recommend that the bill do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1757.

A. W. WALKER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5567.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5567) granting a pension to Alexander W. Walker, have considered the same, and report:

It appears that the said Walker was enrolled as a private in Company K, Twenty-third Regiment Missouri Volunteers, on the 20th September, 1862; promoted to orderly sergeant of said company 14th May, 1864; and was commissioned as first lieutenant of Company I of said regiment on the 8th August, 1864, and as such served until discharged said service, 30th December, 1864.

He alleges that while in said service and in line of duty, in the campaign known as "Sherman's march to the sea," he performed very arduous duties; was exposed to wet and cold, severe marches, skirmishes, and battles; that on one occasion he marched all day in the rain and through mud and water; that he awoke afterward stiff and cold; that in a short time he recovered sufficiently to perform his duty, and continued to do so till his discharge.

He states that early in August, 1865, he was attacked with rheumatism; that the disease concentrated in the knee joint of the right leg; that said disease continued to grow worse; that he was treated by several physicians therefor; that it did not yield to treatment; that it permanently disables him for obtaining a sustenance by manual labor; and he further states that said disease is directly traceable to his service in the United States Army. His declaration for pension was filed in the Pensoin Office April 15, 1872.

M. L. Barnes and G. W. Taylor, in a joint affidavit, testify that prior to his enlistment claimant was an able-bodied and robust man, and capable of performing manual labor; that they were well acquainted with him; that since his discharge he has been in feeble health and incapable of laboring for a support.

Richard Rynex, first lieutenant and quartermaster in said regiment, testifies that he was well acquainted with claimant in the service; that claimant was an excellent soldier, always at his post; that he was much exposed during Sherman's march through Georgia; that he well remembers the night referred to in claimant's declaration; that it was a severely cold and rainy night, and that the exposure of the soldiers upon that occasion *was among the* severest in the whole campaign; that claimant

was exposed to the storm after a day of very severe marching; that since claimant's discharge he has suffered with synovitis of the right knee; and affiant states that claimant's disease is the result of his Army service.

Dr. A. S. Cloud testifies that he has treated claimant for chronic rheumatism since 1868; that his disease is located at the knee of the right leg, which had in 1868 resulted in anchylosis, leaving the synovial membranes thickened, with great tenderness in locomotion and on pressure; that there has been no improvement in claimant's condition since he first began to treat him.

William C. Raid, M. D., testifies that he treated claimant for synovitis of the knee joint in August, 1865; that at that time claimant was suffering with inflammation of the knee joint, which resulted in orthoritis; that, in his opinion, the disease was contracted at least one year before he began to treat it, and might have been caused by excessive exertion in marching, with some immediate exciting local cause to start it; that he visited claimant fifteen or twenty times during August and September, 1865.

Francis E. Coffee, M. D., states that in March, 1874, claimant was afflicted with anchylosis of the right knee joint, and that claimant is not able to perform manual labor.

The War Department contains no records in reference to claimant's disability.

The claim was rejected because, in the opinion of the Commissioner of Pensions, the disability was not occasioned by claimant's Army service.

The committee recommend that the bill do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1758

HANNAH JUSTICE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5566.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5566) granting a pension to Hannah Justice, have considered the same, and report:

The said Hannah Justice is the widow of William M. Justice, who was a sergeant in Company F, Eighth Regiment Missouri Cavalry, from the 9th August, 1862, till discharged, June 21, 1865, and who died June 9, 1867.

It is alleged that the soldier's death was occasioned by inflammatory rheumatism, and that it was traceable to his Army service.

E. T. Robinson, surgeon of said regiment, testifies that in his opinion the remote cause of soldier's death was rheumatism; that while typhoid symptoms supervened before his death, the real cause was the reduction of his vital energies by the rheumatic element preying on his system. He states the soldier was a sound man at enlistment, and remained so until he contracted rheumatism by exposure in the service, and for which said surgeon says he was discharged, and which continued to afflict him after discharge. He continues, "I treated him for rheumatism after his discharge and saw him professionally a short time before death; his case was then hopeless, and at that time I was satisfied that the prime cause of his death was brought about by rheumatism, and that the typhoid symptoms were the result of the rheumatism." He further states that at the time of his last professional visit—which was a short time before said Justice died—that soldier was laboring under difficulty in breathing, evidently resulting from valvular insufficiency of the heart, brought about by rheumatism.

Dr. Watts, in effect, makes the same statement.

The records of the War Department show that the soldier was discharged while a patient in hospital, but there is no record as to disease.

Upon these facts the committee feel warranted in recommending that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1758½.

JOHN DURANT.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4138.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4138) granting a pension to John Durant, have considered the same, and report:

Durant was a private in Company C, Twenty-third Regiment Illinois Volunteers, from March 6, 1862, till discharged, under surgeon's certificate of disability, March 18, 1863. He applied for pension in 1864, alleging that while in said service, during the month of February, 1863, he was taken sick, and continued to be sick up to the date of his discharge, and continued sick for a long time after discharge.

There is no report of the Adjutant-General or Surgeon-General in the papers forwarded to the committee from the Pension Office.

The certificate of disability under which soldier was discharged contains the following: "While on duty at New Creek, West Virginia, was affected with rheumatism and general debility, which prevented him from fulfilling the duties of a soldier." The officer further states in said certificate: "To the best of my knowledge the soldier was in sound health when enlisted." The surgeon of the regiment states in his certificate, of date March 18, 1863: "Soldier incapable of performing duty because of old age (being 63), general debility, and failing of vital energies. Enlistment highly improper."

This is all the evidence in the case except the certificate of Examining-Surgeon Howell, given in 1864, who states "applicant is sixty-four years of age; pulse 100; feeble; no organic disease except rheumatism; affection of muscles of neck and shoulder; pain in shoulder and back of head; great general debility."

The evidence is positive that the soldier was attacked with rheumatism while in the service. If he was improperly enlisted it was the fault of the government agent who accepted him as a man fit for duty; and the committee find that such a claim as this is shown to be is exceptionally meritorious. We therefore cheerfully report this bill back, with a recommendation that it do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1759.

ELIZA DUNCAN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1694.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1694) granting a pension to Eliza Duncan, have considered the same, and report:

Eliza Duncan is the widow of Leroy C. Duncan, captain Company M, Fortieth Enrolled Missouri Militia, and it appears that said Duncan was killed while in line of duty, in said service, May 18, 1865.

The pay of said soldier due at time of death was paid to claimant.

The papers forwarded from the Pension Office contain no statement as to why the claim was rejected by the Pension Office.

We think this claim a just one, and recommend the passage of the bill, which is reported back to the House.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1760.

C. H. STEINMEIER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 1188.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1188) granting a pension to Christian H. Steinmeier, have considered the same, and report:

The claimant, Christian H. Steinmeier, was a private in Company F, Eleventh Indiana Volunteers, from the 24th July, 1861, till discharged, August 30, 1864. He alleges that while in said service and in line of duty, at the battle of Fort Donelson, on or about the 14th February, 1862, he was struck by a piece of a shell in the small of the back, which injured his spine and rendered him disabled for life. He further states that the regimental surgeon who treated him for said injury is dead, and also that the physician who treated him for said injury from the time of discharge till 1870 is dead.

Dr. Epsy states that the claimant was a sound, healthy man, to his personal knowledge, when enlisted in the United States military service.

Charles Kraff, first lieutenant, of said regiment, testifies that at the battle of Fort Donelson the claimant was struck by a piece of shell in the small of the back, and the injury resulting therefrom was of such a character that for a long time claimant could not wear the belt to which was attached his ammunition-box. He further states that at the battle of Port Gibson a piece of fence-rail which had been struck by a shell struck claimant on the back and greatly aggravated the said injury, so that he was unable to march and wear his belt; and he further states that claimant was an excellent soldier, and always on duty prior to the first wound at Donelson.

Jos. L. Newton and Perry C. Johnson state that they have been well acquainted with claimant since October, 1864. That he has since that time been suffering by reason of injury to his back, which renders him unable to perform but little labor. They say they know these facts from personal knowledge, having worked with him.

Dr. H. R. Fairchild testifies that he began to treat claimant in August, 1870; that he had chronic inflammation of the kidneys, and has treated him frequently since for said disease; that the disease does not yield to treatment, and seems to be of long standing, and that slight exposure or moderate labor lays him up for weeks, and that the disease is much on the increase.

The claim *was rejected* because the War Department contains no *record of the injury.*

Examining Surgeon Jno. S. Hidden reports that the claimant is totally disabled, and says, "Applicant has an enlargement over the 11th and 12th dorsal vertebra on the right side, ¾ inch in thickness over a space of 5 inches by 2 in width, adhesions of the *trapizen* with *labisimoderso*, stiffness of the muscles of the back, bending forward, producing stitches and severe pain across the spine, and at times a retention of the urine."

In view of the above facts, the committee recommend the passage of the bill.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1761.

J. R. McFARREN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HATCH, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5551.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5551) granting a pension to Jacob R. McFarren, have considered the same, and report:

The said McFarren was a private in Company F, Eighty-sixth Regiment Illinois Volunteers, from August 11, 1862, till discharged for disability, February 12, 1863.

He alleges that while in said service and in line of duty, in November, 1862, after forced marching, under General Buell, around Louisville, Ky., then to Crab Orchard, Ky., and immediately after battle of Perryville, Ky., he broke down, and as soon as he reached Camp Edgefield, Tenn., his legs turned purple and swollen and spotted, and he was sent to hospital barracks at Gallatin, Tenn., when he took bloody piles and dropsy of chest, the swelling of his legs resulting in bone erysipelas, which has afflicted him ever since, and the piles have become worse. He states that he cannot find his officers and procure their testimony.

Two of claimant's comrades in the service testify that they knew him for three years before his enlistment; that he had always been a sound man physically so far as they knew; that in October, 1862, he broke down on the march to Nashville, and had to be hauled to Camp Edgefield. His legs were spotted and badly swollen; had rheumatism and diarrhea also. Saw him after the war and he was worse.

Dr. H. T. Cooper testifies that he has known claimant since June, 1877, when he began to treat him for bloody piles and dropsy; that claimant had also suffered since that time from rheumatism.

Dr. P. J. Jennings testifies that he began to treat claimant for abscess, hemorrhoids, and chronic rheumatism in December, 1874; that the abscess yielded to treatment, but not the other deseases. They were only paliated. Claimant is not able to perform more than one-fourth manual labor. The doctor states that he had dropsy also, but had recovered therefrom, and that his habits are good.

William M. Reed states that he saw claimant immediately after his return from the Army in 1863. He was then a used up man, and suffering from erysipelas of legs, diarrhea, piles, and rheumatism.

R. A. Moore, a comrade in the service, says claimant was sound when enlisted; that claimant broke down in October, 1862, on the march to Nashville; legs spotted and swollen; had rheumatism and diarrhea; limbs

broke out with bone erysipelas, and was sent to hospital at Gallatin; and up to 1870, when affiant last knew him, claimant was still suffering from said diseases.

P. N. Terwilliger testifies soldier was sound when enlisted; since his return from service has had erysipelas, piles, diarrhea, and rheumatism.

There is a great mass of other testimony, professional and lay, all of which is to the same effect as the above.

The surgeon's certificate under which claimant was discharged shows that he was at the time of discharge afflicted with "hydropericordium," and had been unable to perform military service for two months at that time.

James P. Dimmuth, examining surgeon, certified September 24, 1878, that claimant is wholly incapacitated for obtaining his sustenance by manual labor, and continues: "I find claimant suffering from external and internal bleeding hemorrhoids, which render him a great sufferer." He says further, "I learn that he has had erysipelas and dropsy, but find no disease at present except that above rated."

The claim was rejected because the Commissioner of Pensions was of opinion that the disability was not incident to claimant's Army service.

The committee think the claimant is entitled to pension, and recommend that the bill do pass.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1762.

ELLEN M. BOGGS.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TAYLOR, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6474.]

The Committee on Invalid Pensions, to whom was referred the petition of Ellen M. Boggs, praying for an increase of pension, having had the same under consideration, would respectfully report:

That Ellen M. Boggs is the widow of W. Brenton Boggs, late pay-director in the United States Navy, who lost his life from injuries received under the following circumstances: He was under Admiral David D. Porter as pay-director to the Mississippi squadron during the war of the rebellion. He was stationed on board a large wharf-boat at Cairo, Ill., where he kept all the accounts and money belonging to the government. This vessel was destroyed by fire, which is supposed to have originated from a torpedo placed on board by some evil-disposed person. Pay-Director Boggs, on board the boat, could easily have escaped on the breaking out of the fire, but preferred to remain at his post of duty in order to save the public accounts and money intrusted to his charge. In executing this duty he was overtaken and cut off by the fire, and was obliged to make his way through the flames with the public property and jump into the river, whence he was rescued by a boat from the fleet. He was so fearfully burned that, at the time, according to the testimony of Admiral David D. Porter, "he looked unlike a human being." From the effect of these burns, after many long months of intense suffering, he died, and his widow was pensioned at the rate of $30 per month, which amount she now receives. Admiral Porter, who testifies to the above circumstances of Mr. Boggs's injuries and death, says, in a letter to the petitioner:

> If ever there was a case deserving the liberality of Congress it is your case. If pensions are awarded according to the merits of deceased officers, you certainly should receive a larger one than is now given you, for your husband's disability prevented him from attending to his private business with the energy which was a part of his character. I hope sincerely that you may succeed in getting an increase of pension; and you are at liberty to use this letter as your may deem proper.

Rear-Admiral John Rodgers, of the United States Navy, also testifies to his service and his death and the justness of his widow's claim for increase of pension, and, in a letter to the petitioner, says:

> You undoubtedly deserve the highest rate of pension, which I earnestly hope you may receive.

With these facts, which are well sustained, your committee feel that the increase of pension prayed for in the petition should be granted. They therefore report back the petition, and recommend that the bill accompanying it be passed.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1763.

J. D. RYAN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed

Mr. DICKEY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1340.]

The Committee on Claims, to whom were referred the petition and bill (H. R. 1340) for the relief of J. D. Ryan & Co., having considered the same, beg leave to submit thereon the following report:

This claim rests upon five accounts, filed with the petition, for advertising and job printing done for the use and upon the order of the United States military authorities at Columbus, Miss., during the summer of 1865, at which place and time the petitioners were proprietors of a printing-office and publishers of a newspaper. Three of the accounts are certified as correct by the officers in charge, and amount to $231.50; the other two, amounting to $648.50, are not accompanied by certificates, but rest upon the affidavit of J. D. Ryan, corroborated by the sworn statement of T. C. Cain and of Lewis A. Middleton. The latter, being the successor in business of the petitioners, testifies that he saw portions of the work done and had knowledge of all of it. From a letter of the chief clerk of the War Department it appears that the claims were originally filed in August and October, 1866, and that they were returned with the request that samples of all advertising and printing should be furnished. On account of the absence of these samples, which were required under section 17 of the regulations relative to advertising and job printing, the claim was disallowed by the Department. The proof shows, however, that it was and is impossible for the petitioners to comply with the requirements of said section 17; in that, according to the testimony of Ryan, Middleton, and Cain, the samples, together with the files of the newspaper, were lost, mislaid, or destroyed during the time in which the office changed hands. The proof shows that the work was done and the prices charged were reasonable. The character of Mr. J. D. Ryan is strongly attested by a testimonial in his behalf signed by prominent officials and citizens at his home, and also by the verbal asseverations made to your committee by the Hon. Otho R. Singleton.

Your committee, in view of all the facts, believe that the work was performed as set forth in the accounts of the petitioners, and that the government has never paid for any portion of it; that therefore the amount of $880 is justly due to the petitioners and should be paid them without an attempt on the part of the government at avoidance on account of technicalities.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1764.

BEAUFORT C. LEE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BARBER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6475.]

The Committee on Claims, having had under consideration the petition of Beaufort C. Lee, praying to be allowed compensation for services as a laborer in Forty-fifth Congress, beg leave to report:

It appears from the evidence submitted to your committee that claimant was employed by the Doorkeeper, John W. Polk, as a laborer, from October 15, to December 31, 1877; that he was so employed at the request of the late Mr. Hartridge, of Georgia; that, owing to the death of Mr. Hartridge, claimant is unable to show all the details of his appointment and service. It clearly appears to your committee he served faithfully in the capacity of a laborer in the Doorkeeper's department the period of two months and a half; that is to say, from October 15, to December 31, A. D. 1877; that he served in good faith upon his part, and that he has never received any compensation therefor. Your committee are of the opinion, therefore, that claimant ought to receive at least the sum of $75, and therefore report back the accompanying bill and recommend its passage.

O

)TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
2d Session. } { No. 1765.

ANNA W. OSBORNE.

)NE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HORR, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 1739.]

he Committee on Claims, to whom was referred the petition of Anna W. Osborne, widow of John W. Osborne, of the United States Army, report:

The petition of the claimant is as follows:

My late husband, John W. Osborne, a native of Belfast, Me., enlisted in the Thirty-xth Regiment of Massachusetts Infantry on or about June 19, 1862, and was honor-)ly discharged as sergeant Company E, June 19, 1865, at Louisville, Ky. He there -enlisted on June 22, 1865, and was promoted to hospital steward, United States rmy, and was on duty at the Surgeon-General's Office in this city until about the rst of September, 1866, when he was ordered to Saint Paul, Minn., and remained iere, on duty, until June 22, 1868, when he was honorably discharged the second me, having served six years in succession. He again re-enlisted as hospital steward, nited States Army (I cannot now give the date), was ordered on duty at Fort Rip-y, Morrison County, Minnesota, in April, 1869, and there remained on duty until :tober 28, 1870, the date of his death, which was accidental, and occurred in this ise: Albert A. Osborne (his brother) and himself were practicing shooting at the)rget at the above-named fort, one of them remaining in the rifle-pit while the other red his three shots. His brother had once fired, and for some cause considerable me elapsed before firing the second shot. As he discharged the rifle the second time)hn W. Osborne rose from the pit just in time to receive the contents of the piece, hich penetrated his neck, severing the jugular vein, and he lived but a few moments, aving me with two small children, the eldest only three years of age. Another child as born to me on June 1, 1871.

On June 10, 1869, my late husband purchased improvements on homestead, the same -ing the S. ½ N. E. ¼ and W. ½ S. E. ¼ section 20, township 130, range 29, State of Min--sota; it being near the fort, we made it our residence until the date of his death. I -mained thereupon till about the 20th December, 1870, when I left there and came to 'ashington, D. C., my native place, it being impossible for me to remain there under ie circumstances.

After the birth of my third child, and before I was able to return to my homestead, ie six months' limit had expired, and I lost the title, all that was left me, as I was)tally unable to commute the said homestead.

I am informed by the officers of the Pension Bureau that I have no legal claim to a -nsion (as the pension law now exists), as my late husband was not in the actual)rformance of his duty when he lost his life. Yet, he was not excused from duty at ie time, was simply practicing shooting at a target, as was customary at the fort. I ierefore pray that the above petition may be favorably considered by your honorable)dy.

Very respectfully,

MRS. ANNA W. OSBORNE,
Widow of John W. Osborne, deceased.

WASHINGTON, D. C., *January* 22, 1874.

The claimant makes the following further affidavit:

My late husband, John W. Osborne, was at that time hospital steward, United States rmy, *stationed at said fort.* Shortly after the date of the fire he presented a claim

for loss by fire, to Hon. Henry Wilson, then United States Senator, requesting the Senator to interest himself in his behalf, and giving a complete list of property destroyed belonging to said John W. Osborne and family, authenticated by the certificate of four officers stationed at that time at Fort Ripley, viz, Colonel Mason, Lieutenants Weaver and Hamlin, and Surgeon Charles K. Winnie.

Said petition, I am informed, has been either lost or mislaid.

The following is the list of articles belonging to my late husband and myself, destroyed by said fire, so far as I can at this late day call to mind, to wit: 6 ladies' suits, 3 gents' suits of clothing; jewelry, library, pictures, crockery-ware, &c.

The value of private property so destroyed was estimated in the original petition at $800, to the best of my recollection.

I therefore humbly pray that you will grant the above petition.

Very respectfully, your obedient servant,

ANNA W. OSBORNE.

Subscribed and sworn before me, at the city of Washington, D. C., this 4th day of April, 1874.

THOMAS C. CONNOLLY,
Notary Public.

The above-declared military record of John W. Osborne is confirmed by evidence from the Surgeon-General's Office and also from the Adjutant-General's Office.

An extract from a letter from the Surgeon-General, dated February 25, 1874, is as follows:

"The post hospital at Fort Ripley, Minnesota, was destroyed by fire at 2.30 a. m., July 21, 1870, and all the hospital property, save a few articles of bedding and the hospital records, were consumed."

Your committee recommend that, in view of all the facts in the case, justice demands some compensation, and report a bill giving to the claimant the sum of $600.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1766.

ESTATE OF HARLOW J. PHELPS.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BRIGHT, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 5437.]

The Committee on Claims, to whom was referred the petition for relief of Harlow J. Phelps, now Asenath A. Phelps, administratrix of Harlow J. Phelps, deceased, having had the same under consideration, would respectfully report:

That by section 8 of an act approved July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," it was provided as follows:

SEC. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market price at the place of delivery, nor exceeding three-fourths of the market value thereof at the city of New York, at the latest quotations known to the agent purchasing. * * *

That, in pursuance of the authority in him vested, and with the approval of the President, various purchasing agents were appointed by the Secretary of the Treasury at different points in the Southern States, and among them at New Orleans, La., the agent at the latter place being Mr. O. N. Cutler.

That, under the orders and regulations of the Treasury Department, these purchasing agents sometimes required the owner of cotton to deliver to them one-fourth in kind, and at other times the agents required the payment to them of one-fourth of the market value of the cotton at the date of sale; the owner or holder in either case being then at liberty to dispose of his cotton where, when, and to whom he pleased.

That prior to the law and acts authorized thereby, all trade or commerce between citizens of loyal and those of the insurrectionary States was prohibited by law and by the proclamations of the President, so that in effect there was a complete suspension of transactions between citizens of the respective districts in cotton raised in the United States.

That this act, under the regulations adopted by the Secretary of the Treasury, with the approval of the President, removed, under fixed restrictions and limitations, this prohibition, and authorized trade "in any products of States declared in insurrection."

That there arose a doubt as to the powers of the purchasing agents under the law and regulations adopted thereunder, and Mr. Green Adams, purchasing agent at Nashville, Tenn., having a doubt whether

he had a right to force the owners of cotton to sell the same to the government, addressed a letter on the subject to the Secretary of the Treasury and received the following reply:

SIR: * * * It is no part of your duty as its [the government's] agent to force sales for its benefit, nor to interfere in any way with the legal disposition of their property by legal owners. * * *

GEORGE HARRINGTON,
Secretary of the Treasury ad interim.

Thus it is clear that there was not by this act either created or contemplated a "tax" on "any products of States declared in insurrection," but trade or commerce between citizens of the two sections was restored under prescribed *limitations* and *restrictions.*

The "products" (cotton among them) were *not taxed to one-fourth their value, nor were they taxed at all, but the trade in them was restricted and regulated.*

By the act of March 7, 1864, cotton was *taxed* two cents per pound, but by the act under which these "purchasing agents" operated no tax was contemplated, the title and text of the act clearly forbidding such a construction. Upon the contrary, the act contemplates a *contract*, a *purchase*, not compulsory even, but "*at such prices as shall be agreed on with the seller.*" That this was the construction given at the time is shown by the foregoing correspondence between the Secretary of the Treasury and Mr. Adams. The difference, therefore, in this from the *cotton tax* is clear and should be borne in mind. *The two have no connection whatever with each other, the abolition or retention of the one in no way affecting the other.*

On the 13th of June, 1865, the President issued his proclamation declaring "that all restrictions upon internal, domestic, and coastwise intercourse and trade, and upon the removal of products of States heretofore declared in insurrection, * * * heretofore imposed in the territory of the United States east of the Mississippi River, are annulled, and I do hereby direct that they be forthwith removed."

The following dispatch was sent to Mr. Green Adams, purchasing agent at Nashville, and, it seems, the same or similar dispatches were sent to Mr. F. W. Kellogg and Mr. O. N. Cutler, agents, respectively, at Mobile and New Orleans:

WASHINGTON CITY, *June* 14, 1865.

Twenty-five per cent. to government on cotton east of the Mississippi removed by proclamation. Suspend all action and close up your business immediately, revoking what has been done since the 13th.

H. McCULLOCH,
Secretary of the Treasury.

Mr. Adams testifies:

With this order, in its letter and spirit, I complied. Without delay I closed up the business of my office, having revoked all that I had done since the 13th. I do not know the precise number of bales of cotton in store at Nashville on which the 25 per cent. had not been paid June 13, 1865, but my opinion is that there were two or three thousand. On a very small part of this cotton I collected the tax after the President's proclamation, but on receipt of the Secretary's dispatch [above given] I refunded it. In a word, under my instructions, and in obedience to what I believed to be the law, I paid back to the parties interested every dollar of the 25 per cent. tax that I had collected on cotton in Nashville subsequent to the 13th of June, 1865, without reference to the time that said cotton reached the city.

Mr. F. W. Kellogg, agent at Mobile, testifies:

When the telegram of Secretary McCullough came I revoked all I had done after the 13th, in obedience to his orders. There were several lots of cotton received before the 13th, which were being weighed and classed as rapidly as possible, but had not been finished by or on the 13th. Those lots I gave up; that is, I gave all the cotton back to the owners.

Your committee further find and report that prior to the 13th day of June, A. D. 1865, the firm of Harlow J. Phelps & Co., was a firm composed of said Harlow J. Phelps alone, and had been, and continued to be, on and subsequent to said date, engaged in the cotton business in the city of New Orleans.

That prior to said 13th day of June said firm had received, and had in store in their private warehouse in New Orleans, a large quantity of cotton belonging to themselves and other parties.

That portions of this cotton, received and held by them in New Orleans, *on the east of the Mississippi River*, prior to June 13, were sold by said Harlow J. Phelps on the 15th, 20th, 21st, and 23d days of June, subsequent to the issuance and promulgation of the proclamation of the President, and subsequent to the dispatch from the Secretary of the Treasury of June 14.

That upon these sales the sums respectively of $7,200, $8,588.41, $17,081.58, $3,107.57, and $5,996.92, aggregating $41,974.48, were required and exacted of said Phelps, by O. N. Cutler, purchasing agent, and were paid *under protest* by said Phelps, and the amount, $41,974.48, turned into the Treasury of the United States, and that claim was immediately made therefor by said Phelps to the Treasury Department—that being the 25 per centum of the value of said cotton collected by Mr. Cutler, agent, under the law quoted and the regulations of the Treasury Department, *as a bonus* for the privilege of selling by said Phelps, subsequent to the inssuance of proclamation, and to the dispatch of the Secretary. Your committee further find and report that of this sum of $41,974.48 $29,000 was paid upon the cotton belonging to Harlow J. Phelps, personally, for which amount claim is now made, the balance having been withdrawn by those parties to whom it belonged, and suit brought therefor. Mr. O. N. Cutler, on the 10th day of July, A. D. 1865, wrote to the Secretary of the Treasury:

> I have also made full settlement with all parties from whom I had collected the 25 per cent. east of the Mississippi River after the 13th of Jnne.

H. J. Phelps was "*east of the Mississippi River*," but it turned out that no settlement had been made with him.

Mr. Cutler, on August 31 1865, acknowledging receipt of letter of August 8, writes to the Secretary of the Treasury with regard to this claim of Harlow J. Phelps:

> All of this cotton came from the west side of the river, and as, under the law and regulations, none could come from that section unless it came for sale to the government, I do not see upon what grounds Messrs. H. J. Phelps & Co. can claim the return of the 25 per cent. as asked for in their letter.

Your committee further report that they find no "law or regulation" whereby it is or was required that all or any cotton coming to New Orleans should come there "*for sale to the government*," as asserted in the last quoted letter of Mr. Cutler. Upon the contrary, prior to the 13th day of June, 1865, cotton coming to the port of New Orleans, whether from the east or west side of the river, came, then, "under the same regulations, and no distinctions existed between that coming from the east and that coming from the west side."

Mr. Cutler being mistaken, therefore, in this matter, it remains to determine whether or not the fact that this cotton, belonging to Harlow J. Phelps, did come from the west side of the river, affected his right to have the 25 per centum refunded as having been collected in violation of law, and against the instructions of the department, the payment of $29,000 having been exacted subsequent to the date of the President's procla-

mation, by which all restrictions upon "*trade east of the Mississippi River*" had been *annulled* and *removed;* and upon cotton that was in New Orleans *prior* to the 13th of June, 1865. The claim of Mr. Phelps was referred by the Secretary of the Treasury for examination to Mr. E. C. Banfield, Solicitor of the Treasury, who, in his report of November 1, 1870, says:

The vital question in the case seems to me to be, whether cotton grown in insurrectionary States, west of the Mississippi River, legally taken to New Orleans, was entitled to the benefit of the proclamation of June 13. I think it was. I observe nothing in the law, regulations, or the language of the proclamations implying that the tax of 25 per cent. was levied upon the *production* of cotton. On the other hand, it was levied as a tax upon the *privilege* of having it *removed to a market.* Having arrived, legitimately, at New Orleans, I see no reason why it was not entitled to a free removal therefrom after the 13th of June, 1865. If it was not legitimately at New Orleans, it was liable to condemnation and should have been seized.

Other restrictions, aside from the imposition of the tax, still continued upon the removal of cotton from insurrectionary districts west of the Mississippi River from the 13th of June until the 24th of June, 1865. The cotton could only be removed through prescribed agencies, at prescribed posts; or, if the agencies were all abolished on the 13th June, then I do not see that any such cotton could be removed to market at all. At any rate, trade in cotton was not free. Its shipment was regulated, restrained, prescribed, until the proclamation of June 24 was issued. Such is my opinion of this case from an examination of the papers accompanying the communication of Mr. Hood. As an original question, I should not hesitate to advise a refund of the tax sought to be recovered by the claimant. The papers, however, indicate that adverse action has been taken upon the claim by the late Secretary of the Treasury, and I therefore return the papers for such action as you may deem proper under the circumstances.

E. C. BANFIELD,
Solicitor of the Treasury.

Mr. Warner, from the Committee on Claims of the Forty-fifth Congress, in reporting upon this case, said:

Your committee are of opinion that these regulations for the purchase of cotton, being restrictions upon trade, and the President of the United States having, by his proclamation, removed them, as, by law, he had the right to do; and the proclamation by express terms applying to all cotton east of the Mississippi River on the 13th day of June, 1865, without excepting, as it might have done, cotton grown west of said river, this money was collected from the petitioner without warrant of law, and that it ought to be refunded. It was competent for the Government of the United States to remove these restrictions, or to suffer them to remain. They were removed because it was for the benefit of the people of the loyal States to have them removed. The people of the North wanted cotton and they made trade in cotton free at the port of New Orleans on the 13th of June, 1865. Before that date cotton came to that port from the east and the west sides of the Mississippi under the same regulations, and no distinctions existed between that coming from the east and that coming from the west side. The one was not kept separate from the other. In this condition the proclamation found this merchandise, and your committee are of opinion that as the proclamation made no distinction based upon the place of its growth the Secretary of the Treasury had no right or authority in law to make any. They are better satisfied with the conclusion to which they have arrived in this case from the fact that this conclusion, if approved by Congress, will, by reimbursing the claimant, give him the same benefits that others similarly situated have enjoyed, and will establish uniformity of construction of this proclamation.

Immediately upon the issuance of the proclamation of June 13, 1865, by the President, we see that Mr. Adams and Mr. Kellogg not only suspended further collections of this 25 per centum, *but even refunded the money in case of partial execution of contracts made prior to 13th day of June*, and we also find that Mr. Cutler did the same in all instances save *alone* that of Harlow J. Phelps. Your committee have failed to discover any reason for this *singular exception*, and are forced to the conclusion that the Secretary of the Treasury was misled by the misrepresentations of the agent at New Orleans, or it would not have been necessary for your committee to pass upon this case.

Your committee fully concur in the opinions, above quoted, of Mr.

Banfield and Mr. Warner, concluding that the collection of the 25 per centum was only a "*restriction of trade*"; and that the proclamation of the President, in express terms, *annulled* and "*removed all restrictions upon trade or commerce*" east of the Mississppi; that the collection thereof subsequent to the proclamation was a palpable violation of its explicit commands, and was without any authority of law.

By the act of March 7, 1864, a tax of two cents per pound was imposed upon cotton, and this tax was not removed or affected by the proclamation of June 13, 1865, and the cotton in question remained liable to the payment of that tax. From the general regulations issued by the Secretary of the Treasury on September 24, 1864, your committee find that the price to be paid by the purchasing agents for cotton was three-fourths of the New York quotations, "*less a sum equal to the internal revenue*," and, therefore, conclude that the $29,000 paid by Harlow J. Phelps was the 25 per centum of the value of *his* cotton, *plus* the "*sum equal to the internal revenue.*"

As nearly as your committee can arrive at the amount, without knowing the exact number of pounds of cotton involved, of this internal revenue, it is something less than $5,000 to which the government was entitled under the law of 1864.

Your committee therefore find that the $5,000, as internal-revenue tax due the government, should be deducted from the sum claimed, $29,000. This leaves a balance due of $24,000, for the payment whereof, your committee recommend the passage of the bill herewith returned.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1767.

MARY J. TRIMBLE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3811.]

The Committee on Claims, to whom was referred the bill (H. R. 3811) for the relief of Mary J. Trimble, respectfully report:

That the petitioner is the widow of the late Henry W. Trimble, formerly consul of the United States at Milan, Italy, and who, while in the actual discharge of his duties at that post, was, by a dispatch from the Department of State, dated August 17, 1876, ordered to close his office and return home. He was further informed by said dispatch that he would be entitled to compensation for home transit, as established by law. Upon his return, his account was duly rendered and audited; and, as is stated by the Secretary of State (in a letter to your committee, dated March 13, 1880), "it appears that the sum of sixty-eight dollars and fifty cents was found to be due to the [late consul], which was not paid for want of an appropriation." Since that time the said Trimble has died, leaving the petitioner, his widow, financially embarrassed.

Your committee do therefore recommend that the bill be amended by reducing the amount therein ordered to be paid to the petitioner to the said sum of $68.50, and that, as so amended, the bill shall be passed.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1768.

MRS. PETER A. CASSIDY.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BOWMAN, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6476.]

The Committee on Claims, to whom was referred the petition of Mrs. Peter A. Cassidy for compensation for a machine invented by her late husband and now in use by the government, have considered the same, and respectfully report:

This claim was considered and favorably reported upon by the Committee of Claims of the Forty-fifth Congress (Forty-fifth Congress, third session, Report No. 8), but no final action was reached.

Their report was as follows:

Peter A. Cassidy was employed in the Second Auditor's Office of the Treasury Department from August 1, 1867, to October 10, 1876. While thus employed he invented and caused to be patented a machine for cutting the vellum-cloth extensively used in repairing vouchers, &c. By means of this machine he was enabled to do the work which would otherwise have required five men. This is shown by the Auditor, and the machine is still in use, and is considered indispensable by the Auditor. By a statement of Joseph Barton, now in charge of archives division, under the old plan two men could cut 25 strips in five cuts; by the new device, one man can cut 50 strips in two cuts.

The machine was patented July 11, 1876. Peter A. Cassidy died in January, 1878, without having received any compensation from the government for the use of his invention, and his attending physician, William Ward, says that this circumstance preyed upon his mind and added to the causes that produced his death. He left the petitioner (his widow) and eight children. She asks that the government pay to her the sum of $10,000 for the use of her husband's invention. By the use of the machine one person can do the work of twenty-five.

It is manifestly just that the government should pay for the use of the patent, and we think $2,500 not an unreasonable sum for that use. We therefore report the accompanying bill, with the recommendation that it do pass.

This committee concur in the conclusions and recommendations of the former committee, and report the accompanying bill.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1769.

HENRY P. ROLFE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. L. H. DAVIS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 18.]

The Committee on Claims, to whom was referred the bill (H. R. 18) for the relief of Henry P. Rolfe, late United States attorney for the district of New Hampshire, report as follows:

That they have had the matter of the claimant under consideration, and find the facts of the case to be as follows:

That the claimant, Henry P. Rolfe, was formerly United States attorney for the district of New Hampshire, and that after his term of service as such United States attorney expired, to wit, from the 1st of April, 1874, until the 23d day of July, 1874, he acted as United States attorney for said district; that during the time he so acted as such district attorney he performed important and valuable services for the government in procuring the extradition of one William Johnson from Nova Scotia to the district of New Hampshire, upon the order of the State Department and the warrant and requisition of the President of the United States. That at the May term of the United States court for said district said Johnson was tried and convicted of passing counterfeit United States Treasury notes, and sentenced to the State prison for the term of three years, and that he is now serving out his sentence.

That immediately upon the adjournment of said term of court the memorialist addressed a note to the Secretary of the Treasury, inquiring for the source to which he should look for his pay for the services rendered, and where he should present his claim for services and expenditures in procuring the said Johnson, and that he received no reply in reasonable time; and that on the 13th day of June he addressed a similar note to the Secretary of State, and the following is a copy of the answer received from said officer:

DEPARTMENT OF STATE,
Washington, June 19, 1874.

SIR: Your letter of the 13th instant, in relation to your compensation for services rendered in procuring the extradition of William Johnson, indicted for passing counterfeit United States Treasury notes, has been received and referred to the Attorney-General for proper action thereon.

I am, sir, your obedient servant,

HAMILTON FISH.

HENRY P. ROLFE, Esq.,
United States Attorney, Concord, N. H.

That the claimant heard nothing further from the departments in relation to the matter until the 26th day of December following, when

the claimant addressed a letter to the Attorney-General, making inquiries about his compensation for said services, and received the following answer:

DEPARTMENT OF JUSTICE,
Washington, January 26, 1875.

SIR: I have received your letter of the 23d instant, relative to your account for services rendered and expenses paid in the extradition of William Johnson from Nova Scotia to New Hampshire, upon the order of the State Department and warrant and requisition of the President.

Your letter of the 26th ultimo, to which you refer, was referred to the State Department, and I have been verbally informed by one of the officers of that department that the account would be paid at an early day.

I will, however, transmit a copy of your letter to the Secretary of State.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

H. P. ROLFE, Esq.,
Concord, N. H.

In February, 1875, the memorialist came to Washington and had repeated interviews with the Attorney-General, and was then informed by him that his account would be paid by the State and Treasury Departments and the Department of Justice, and gave the claimant assurances that the claim should be attended to immediately after the adjournment of Congress.

That another long delay occurred, and then the memorialist again addressed the Attorney-General, reminding him of his promise, and in reply received a letter from the Attorney-General, of which the following is a copy:

DEPARTMENT OF JUSTICE,
Washington, May 6, 1875.

SIR: I have received your letter in relation to your account for services and expenses in the matter of the extradition of William Johnson from Nova Scotia.

There is no appropriation under the control of this department from which your account can be paid, and, upon inquiry at the Treasury Department, I am informed that they have no appropriation applicable to such expenses; and, upon referring the matter to the Secretary of State, he informed me that, after examination, the only item in the account properly chargeable to the appropriation under his control is the last, for $140, which will be paid on rendition by you of an account therefor.

I regret my inability to have this account allowed, as I believe to be justly due, but, under the circumstances, I am unable to do so. The only thing that remains is to have the claim presented to Congress at its next session, when I have no doubt, after all the facts in the case are laid before the Committee on Appropriations, a bill will be reported to pay the claim.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

HENRY P. ROLFE, Esq.,
Concord, N. H.

The memorialist further shows that the $140 has been paid to him by the government, and was paid in December, 1875.

It is further shown by the memorialist that he was appointed and commissioned United States attorney for the district of New Hampshire December 22, 1869; and that his commission as such district attorney expired on the 22d day of December, 1873; and that his successor in office was not commissioned and qualified till the 23d day of July, 1874: and that the duties of district attorney for said district of New Hampshire were performed by the claimant from said 22d day of December, 1873, to the 23d day of July, 1874, without any temporary commission from the judge of the district, who is authorized to commission a temporary United States attorney to discharge the duties of the office; and

for that reason the claim of the memorialist cannot be paid by the Attorney-General or the Comptroller of the Treasury; in support of which the claimant produces the following official letters, which explain themselves:

CONCORD, N. H., *July* 28, 1874.

SIR: I am in receipt of yours of the 27th instant, in which you say as follows: "As your term of office expired on December 22, 1873, you are requested to forward your appointment by the judge of the circuit court as acting attorney."

I regret to inform you that I have never had any such appointment.

I am, very respectfully, your obedient servant,

HENRY P. ROLFE,
Late United States Attorney for the District of New Hampshire.

Hon. D. W. MAHON,
Auditor, Washington, D. C.

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
December 28, 1874.

SIR: Your letter of 22d instant is at hand, and in reply I have to say that before your account can be audited in this office it will be necessary for you to forward evidence of your appointment as temporary attorney by the judge of the United States circuit court of said State, who, in cases of vacancy in the office of United States attorney, has the power to designate some person to discharge the duties of the office until an appointment is made by the President and the appointee qualified for the duties of his office.

Respectfully,

D. W. MAHON, *Auditor.*

HENRY P. ROLFE, Esq.,
Concord, N. H.

Your committee are also assured that the court or justice holding the New Hampshire district court would have appointed said claimant as acting United States attorney for said district if he had known there was a vacancy, but his attention was not called to the fact. That the account of said claimant is minutely and fully itemized, and, being quite lengthy, it is thought unnecessary to set it forth in detail in this report, and therefore state the whole amount thereof to be the sum of $2,519.97; and believing the services rendered by the claimant, and the money paid out by him while so acting for the United States should be paid, and finding there is no remedy for him except by act of Congress, the committee report back said bill, and recommend its passage.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1770.

HENRY HOFFMAN.

JUNE 12, 1880.—Laid on the table and ordered to be printed.

Mr. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3972.]

The Committee on Claims, to whom was referred the petition of Henry Hoffman, accompanied by a bill (H. R. 3972) for his relief, having had the same under consideration, respectfully submit the following report:

The evidence in this case shows that in the summer of 1863, on account of hostilities by the Indians, the settlers on Beaver Creek and Birch Coolie, in the county of Renville, in the State of Minnesota, had abandoned their homes leaving a quantity of grain in stacks on their premises; that, on account of the danger of said stacks of grain being destroyed by fire, the adjutant-general of the State of Minnesota, on August 20, 1863, authorized Lieut. Col. William Pfander, of the First Minnesota Mounted Rangers, in charge of the frontier defenses north and south of Fort Ridgely, in said State, to make an agreement on the part of the State to secure said grain from destruction. Thereupon Colonel Pfander made an arrangement or agreement, the nature and terms of which do not appear, with the claimant, who proceeded to the localities indicated and thrashed out 406 bushels of wheat, 110 bushels of barley, 115 bushels of rye, and that he hauled 107 bushels of wheat, 90 bushels of barley, and 24 bushels of rye to New Ulm, in said State, and sold the same for $117.10, and retained that sum in part pay for his labor and expenditure in thrashing out said grain. Shortly afterwards Lieutenant-Colonel Pfander was called to Fort Snelling, the remainder of the grain unsold being stored on the premises or near where the labor was performed. This grain being needed for feed for the government animals at Fort Ridgely, Lieut. Col. John T. Averill, then commanding the post, ordered the post quartermaster to have the grain hauled to the post for that purpose. It nowhere appears whether the whole, or how much, of the grain thus stored was, under the order of Lieutenant Colonel Averill, used or appropriated by the government. He states he made the order mentioned; that the amount of grain received was considerable; that he cannot state the exact amount, but that the order was carried out according to the best of his knowledge and belief.

Claimant insists that the Government of the United States is liable, in view of these facts, to pay him the balance of his claim for his labor in thrashing the grain and the amount he paid the hands who assisted him.

His claim is for use of thrashing machine and 8 horses 8 days, at $15 per day.	$120 00
Pay of laborers (9), drivers, and escort, 8 days, at $1.50 per day each	108 00
Making	228 00
Deducting the amount received for grain sold	117 10
Leaving a balance due of	110 90

As no contract is alleged or proven, it may safely be assumed that none was made. No doubt the claimant acted under permission of Lieutenant-Colonel Pfander, who, it will be remembered, derived all the authority he pretended to exercise from the State authorities alone. The evidence fails to disclose, under whatever arrangement was made, from what source, unless it may be inferred, the claimant was to receive pay for his labor. The inference would be that the State was to reimburse him, or that he was to receive payment from the sale of the grain. The grain, however, was the property of the settlers who had raised it, and who were compelled to abandon their homes to insure their personal safety, and they, if any persons, are entitled to receive the proceeds of that portion used by the government unless they have been reimbursed, of which there is no evidence before your committee. The claimant cannot insist that he had a lien on the grain for the value of his labor in securing it from destruction, and thus render the United States liable, in the absence of evidence of any contract, express or implied, with any officer of the government. The only evidence tending to prove that claimant was requested to perform the labor the pay for which this claim is made, establishes also that such request was made by an officer of the State of Minnesota, and who was acting only by authority of said State, and of course could only bind his principal.

Your committee are of the opinion that no liability exists on the part of the United States to pay said claim, and therefore recommend that said bill accompanying the papers in this case do not pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1771.

JAMES BRIDGER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAWYER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6477.]

The Committee on Claims, to whom were referred the papers relating to the claim of James Bridger for the payment of rent for the use of the premises known as Fort Bridger, and for the value of his improvements thereat, having had the same under consideration, submit the following report:

The evidence in this case clearly establishes the following facts: About the year 1843 claimant located upon a tract of land situated in Green River County, now Utah Territory, and commenced the erection of a trading house and other buildings and improvements. From the date of said location said claimant resided at said post, and engaged in trade with the surrounding tribes of Indians, until in the fall of 1857, at which last-mentioned date the improvements constructed by said claimant at said trading post consisted of thirteen spacious and substantial log houses constructed out of hewed timbers; the roofs and floors were of sawed boards, which were sawed out with-whip saws; the roofs were also covered with sod to render them fire-proof. The houses were so located as to form a hollow square in the center of an area of about four thousand square feet, all of which was surrounded with a strong, solid stone wall, laid in cement, about eighteen feet high and five feet thick, with bastions at each corner. Outside of said wall was a strong corral for stock, about two hundred by three hundred feet square, inclosed in like manner by a stone wall laid in cement, about ten feet high and two and a half or three feet thick, together with six other outhouses. The testimony shows that these improvements were erected by said claimant, and were used by him as his residence and as a trading post, and were called and known as "Fort Bridger." In the year 1857 the Army of Utah, commanded by General Albert S. Johnston, took possession of said premises on behalf of the United States, under a written contract of lease executed by claimant, of the one part, and Capt. John H. Dickerson, assistant quartermaster, United States Army, on behalf of the United States, of the other part.

The material portions of said written contract, so far as the claim of said Bridger is concerned, are substantially as follows:

Said claimant leased to the United States for the term of ten years from the 18th day of November, 1857, a tract of land consisting of three thousand eight hundred and ninety-eight acres and two roods, situated in Green River County, Utah Territory, and particularly described in a

plot attached to said written contract and made a part thereof, upon which tract of land is situated "Fort Bridger." By the terms of said contract the United States agreed to pay to claimant an annual rent for the use of said premises of $600, the rent to commence as soon as claimant established his title to said tract of land to the satisfaction of the Quartermaster-General of the United States, or whenever the Attorney-General of the United States should pronounce the title good. It was further agreed by the contracting parties that the United States Government, through its agent, should have the privilege at any time within the period of said lease of purchasing said tract of land by paying claimant the sum of $10,000. It is also provided by the terms of said contract that said lease might be terminated by the United States upon three months' notice by the Quartermaster-General of the United States Army, or by his agent, to claimant.

The United States have continued to occupy said premises from the day of the date of said lease to the present time. The claimant has never established his title to the premises, but on July 14, 1859, less than two years after the date of said contract, the President declared it a military reservation, and that the General Land Office had never recognized any private claim in the vicinity of Fort Bridger; and, further, should any claims have existed in that locality, under the treaty of 1848 with Mexico, that no law existed for their adjustment. The testimony further shows that the cost of said improvements to said claimant was about the sum of $20,000.

Claimant, believing himself entitled to be paid for the use and occupation of Fort Bridger and the buildings connected therewith, and for the value of said improvements, made application to the War Department therefor, and was informed by a communication from the Secretary of War, dated February 21, 1878, that his failure to establish his title to the property in question previous to its being declared a military reservation precluded the Secretary of War from recognizing his claim to ownership or rent. The foregoing are the material facts bearing upon the claim for which your committee are asked to recommend an allowance.

It may be, and really appears to be, a hardship upon claimant that he should be entirely deprived of the improvements erected by him, and of compensation for their use by the United States for a period of more than twenty years; yet, the terms of said written contract clearly preclude him from a recovery according to the forms of law. The evidence upon which this report is founded consists of numerous affidavits, and communications from the War Department, together with a certified copy of the written contract.

Your committee believe the ends of justice will be promoted by permitting the claimant to assert his claim in a court of justice, where witnesses can be subjected to cross-examination and the proper tests applied for the ascertainment of a just and equitable determination.

Your committee therefore recommend that the accompanying bill be passed permitting claimant to sue in the Court of Claims for the amount he believes himself entitled to, freed from the bar of the statute of limitations, and that his case be heard by said court and determined as equity and justice shall appear.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1772.

CENTENNIAL CELEBRATION AT GUILFORD COURT-HOUSE AND STATUE TO GENERAL NATHANIEL GREENE.

JUNE 12, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. JOSEPH J. DAVIS, from the Committee on Yorktown Celebration, submitted the following

REPORT:

[To accompany joint resolution H. Res. 329.]

The Committee on Yorktown Celebration, to whom was referred the joint resolution (H. Res. 329) providing for a centennial celebration of the battle of Guilford Court-House, &c., have had the same under consideration, and report the following:

The people of the State of North Carolina propose to celebrate the centennial anniversary of the battle of Guilford Court-House, on the old battle-field, on the 15th day of March, 1881, and, by a resolution of the legislature of the State, have asked that Congress aid in rendering the celebration worthy of the State and the Union.

The committee believe that such celebrations tend to strengthen the love of liberty, and that the commemoration of the brave and heroic men whose self-sacrificing patriotism founded the American Republic is a duty, the performance of which inspires the hearts of the people with a greater love of country, and thus aids in perpetuating that republic.

During the darkest and most doubtful days of the American Revolution the soldiers of the State of North Carolina were true to the cause for which they had pledged their lives, their fortunes, and their sacred honor, and your committee believe that such a testimonial as is asked for by the resolution is meet and proper; but they believe it to be more in accordance with precedent to limit the recognition of the Federal Government to the erection of a statue, leaving the memorial column or pedestal to be provided for by the State or its citizens.

They therefore report the accompanying joint resolution as a substitute for that referred to the committee, and recommend that it do pass.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1773.

LEVI PRICE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MILLS, from the Committee on Ways and Means, submitted the following

REPORT:

[To accompany bill H. R. 6478.]

The Committee on Ways and Means, to whom was referred the bill for the relief of Levi Price, of Frederick County, Md., beg to report that they have carefully examined the case, and find the following facts:

Mr. Price was engaged in distilling spirits in Frederick County, Md., during the years 1875, 1876, and 1877; that his still was assessed 3½ gallons of spirits to every bushel of grain mashed. The still did not produce the amount assessed, which fact was well known all the time to government agents. The true cause of the deficit was not perceived at the start. He thought at one time the fault was in the distiller, and he procured another, of great skill and experience, without a change of result. The real cause was finally found to be that the construction of the still and stop-vat was imperfect. The still was so far below the level of the stop-vat that it was impossible to discharge it or blow out all the spent beer from the lower chamber of the still; and when the chamber was again charged, it was too full to allow boiling space; so that the process of distillation was incomplete and failed to extract all the spirits from the beer. Spent beer to the depth of two and a half feet remained in the still after the distiller had blown out the still and supposed it was empty. The still was covered so that the defect could not be seen. There is no fraud charged, and it is admitted that Mr. Price has paid to the government all the taxes on all the spirits produced by his still, and that the failure to produce the required amount did not occur through any fault of his. Mr. Price has the character of an honest distiller and an excellent citizen.

The Commissioner of Internal Revenue says: "A bill authorizing me to abate the deficiency taxes thereby incurred would have my hearty approval."

Mr. Price claims that there should be refunded him some five hundred dollars improperly paid by him to the government. Of this amount $200 was expended for a Tice meter, which he was ordered to purchase by the department, and then ordered by it not to use. Of course the amount was a clear loss to him, and without any fault of his, and ought to be refunded. The committee therefore report the accompanying substitute for the bill committed to them, and recommend its passage.

R. Q. MILLS.

We, the undersigned members of the Ways and Means Committee, agree that Mr. Mills may report favorably the bill for the relief of Levi Price, of Maryland.

J. R. TUCKER.
J. G. CARLISLE.
FERNANDO WOOD.
W. R. MORRISON.
J. PHELPS.
WM. D. KELLEY.
M. H. DUNNELL.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1774.

CIRCUIT COURT OF THE UNITED STATES FOR THE FOURTH JUDICIAL CIRCUIT.

JUNE 12, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. HURD, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 1512.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1512) "to alter and appoint the time for holding the circuit court of the United States for the fourth judicial circuit, and for other purposes," report that they have had the same under consideration, and recommend its passage.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1775.

THOMAS SNELL.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HURD, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 6479.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3233) for the relief of Thomas Snell, would respectfully report:

The committee find the facts in said case to be as follows:

That on the 18th day of May, 1863, the said Snell, with Hiram Butterworth, signed a bond in the penal sum of $10,000, given to the United States, conditioned that Samuel H. Lunt would perform, according to law, the duties of assistant quartermaster of volunteers.

Captain Lunt, in pursuance of his appointment, continued in the discharge of his duty until some time in June, 1865, and died on the 28th of July following. During the time that he performed the duties of his office he did a large business, being placed in responsible positions in the service, and disposed of and distributed a large amount of property and money.

In consequence of the death of Captain Lunt, in July, 1865, his accounts and papers were thrown into confusion, from which it is probable that the deficiency claimed originated. The securities of Captain Lunt assumed, as they had a right, that his accounts were correct, and knew nothing to the contrary until some time in the year 1875, when suit was instituted on the bond in the district court of the United States for the southern district of Illinois, and a judgment rendered by the court for the full amount of the bond against said Snell, he being the only responsible surety and the only party served with process.

While the court, in the application of the strict rules of evidence, found a liability against the said Snell, in connection with the district attorney of the United States the judge made the following certificate indicating the injustice of the enforcement of the strict legal rights of the government against the securities on said bond:

I, Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois, and *ex officio* judge of the circuit court of said district, do certify that the case of the United States *vs.* Samuel H. Lunt, Thomas Snell, and Hiram Butterworth was tried before me; that said action was brought to recover a supposed balance due the United States from the late Samuel H. Lunt as quartermaster and disbursing officer in the United States service; that said Lunt died while on duty in July, 1865, and said suit was commenced in 1875, the said Snell and Butterworth being sureties on the bond of said Lunt, and Snell only being served with process and appearing.

I further certify that, in my opinion, said Snell has a just claim to be relieved by act of Congress *from the judgment* rendered in said cause. From all the evidence in

the cause, I think it extremely probable that no deficit was chargeable against said Lunt or his securities; that the apparent deficit for which said judgment was rendered arose from the loss of papers and vouchers of said Lunt for portions of the time for which he was acting as quartermaster and disbursing officer. I think, from all the evidence, that such papers must have been lost by reason of the failure of the proper officer to take charge of and preserve the papers of said Lunt, on his death, as required by the articles of war.

S. H. TREAT.

FEBRUARY 27, 1879.

I fully concur in the conclusions of Judge Treat as above stated, and I think that Mr. Snell has a meritorious claim to relief at the hands of Congress.

JAMES A. CONNELLY,
United States Attorney.

FEBRUARY 27, 1879.

Captain Lunt was acting quartermaster from some time in 1862 until some time in June, 1865, and up to December, 1864, his accounts were regular and substantially correct. He died on the 28th of July, 1865, at Mobile, Ala., and in law his securities had no right to the custody or control of any of his papers or funds, as the articles of war then in force provided—

In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make and transmit to the office of the Department of War an inventory thereof.

While it may be true that the failure of the proper military authorities to perform their duty according to the requirements of the article of war does not discharge the obligation of the bond, yet if it be true, as certified by the judge and district attorney, that the apparent deficit in this case is the result of a loss of papers, and that such loss was caused by the negligence of the officer of the United States, such a state of facts present to the consideration of Congress a strong case for equitable relief. At the time of the quartermaster's death the sureties lived in the State of Illinois, and were in fact, as well as in law, without power to protect themselves.

On the 31st day of December, 1864, Lunt's account current shows that he had then in his hands the sum of $11,063; and this account, with his charges and credits after that time, was the basis of the balance found due the United States, and on which the judgment of the court is based. He continued to act as quartermaster nearly six months after the close of his account in 1864, and during this time he is charged with about $3,700, and only credited with the sum of $408.77, much less than the probable ordinary expense of his office would have been during that time. During these six months he was stationed at different points in the South, requiring more or less disbursement in the discharge of his duty. From these facts and circumstances, with what other facts were before the court, and induced the certificate of the judge and district attorney, we are of the opinion, and concur with said officers, that "It is extremely probable that no deficit was really chargeable against said Lunt."

Bearing upon the probabilities of the question of defalcation we have considered the affidavit and testimony of Col. C. W. Moulton, submitted in this matter. Colonel Moulton was a brother-in-law of Captain Lunt, knows all about his habits of living and his family before his death, and their condition since that time. He swears that during his lifetime there was no indication of the use and expenditure of any such sums of money; that Lunt left an estate worth but little, and that his family have been since his death dependent upon their own efforts and resources for support.

His account, ending December 31, 1864, showing the above amount in his hands, and his having received other moneys in January and February following, it is not unfair to presume that the officer disbursing the same to him must have had evidence and assurance that the funds on hand in December were either needed or appropriated. In June, 1865, Captain Lunt was dismissed from the service, but after his death such order was rescinded, and his memory and services as an officer relieved from reproach and criticism.

Taking into consideration all the facts and circumstances, it is very apparent that his honor the judge and district attorney have construed this case properly, and that it presents strong reasons for legislative interference.

The committee therefore recommend the passage of the accompanying bill.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1777.

GREENLEAF CILLEY.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. TALBOTT, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany bill H. R. 6480.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 15) for the relief of Greenleaf Cilley, respectfully report:

The records of the Navy Department have been carefully examined, and the arguments and testimonials of Commander Greenleaf Cilley have been read and considered.

It appears that the naval board of three retired commodores, before whom he was ordered for examination, failed to report him as morally qualified for promotion to a commander on the active list, in consequence, apparently, of his once having been tried and punished by a naval general court-martial for the so-called offense of intoxication.

The abstract of service and testimonials presented from officers of every vessel that he has sailed in since he entered the Navy in 1841 show that he has performed his duties most efficiently and faithfully, and that he possesses the highest professional qualifications and attainments.

The preponderance of evidence goes to show that he is not intemperate, but strictly temperate.

That eminent officer, the late Admiral Dahlgren, writes to the Hon. Gideon Welles, Secretary of the Navy during the war, that Lieutenant-Commander Cilley proved a most active and efficient commander of a monitor and possesses qualities too useful to be lost to the country.

The venerable Admiral Joshua R. Sands, whom Cilley served under at the outbreak of the rebellion, says, "While I was in command of the Brazil squadron, your character and conduct was that of a meritorious officer and one commanding my respect and esteem."

The late gallant Admiral Henry Knox Thatcher, with whom Lieutenant-Commander Cilley served as executive officer in three "first-rates" during the war of the rebellion, says, "My personal observation of his morals and professional knowledge led me to believe them of the first order, entitling him to promotion."

The distinguished Admiral Benjamin F. Sands, under whom said Cilley served in the North Atlantic squadron during the war as executive officer, says Cilley performed his duties with zeal and ability, and he could see nothing in his conduct to reprehend, but much to commend; and further testifies to his most faithful and efficient service during that time, *as also to his high* professional qualifications and attainments.

The committee are of the opinion that an officer so well spoken of by all the commanding officers under whom he served during the war should be reinstated to the active list of the Navy, and recommend the passage of the accompanying substitute for bill H. R. 15, placing him in the active list of captains in the Navy.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1778.

ALICE J. BENNIT.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5753.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5753) for the relief of Alice J. Bennit, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence in the case on file in the Pension Office that the petitioner is the widow of Charles N. Bennit, late private Company H, Fourteenth New York State Militia, who was a pensioner upon the rolls—

For loss of leg below the knee, the result of wound received at the battle of Bull Run, August 29, 1862. He was pensioned at $8 per month from date of discharge, October 8, 1862, and paid at that rate till March 3, 1865, when, under the provisions of the act of that date, his pension was suspended by reason of his employment in the civil service of the government. Under the provisions of the act of June 6, 1866, payment of pension was resumed, and the rate thereof increased to $15 per month. A further increase to $18 per month was allowed under the act of June 8, 1872. The amount withheld between March 3, 1865, and June 6, 1866, was paid to the widow May 16, 1879.

The following certificates of the attending physicians show time and cause of death of the soldier:

This is to certify that I was one of the attending physicians on Charles N. Bennit during his last illness. He was taken with a convulsion about 7 p. m. November 25, and died November 26, at 2 p. m. His disease was congestion of the brain, with probably a rupture of one of the cerebral arteries. In my opinion the cause of his death was indirectly related to the loss of his leg during the war. My reasons are briefly as follows, viz: In any person losing a limb just as much of the area of the circulation of the blood is cut off, and so a greater pressure is brought to bear on the remaining vessels. Again, there is a great amount of vital force expended by anybody who is obliged to carry around eight or ten pounds of wooden leg. This is an ever-increasing burden, and will in time gradually undermine the party's health. Thus in Charles N. Bennit's case, with a debilitated system and an increased blood pressure, nothing more likely than his death by congestion of the brain.

WILL. W. BENNIT, M. D.,
28 *Bond Street, Brooklyn, N. Y.*

APRIL 28, 1880.

BLADENSBURGH, PRINCE GEORGE'S COUNTY, MD.,
September 30, 1879.

The undersigned was called hurriedly on the night of November 25, 1878, to see Mr. Charles N. Bennit, in consultation with his brother, Dr. William Bennit. The history of the case, as gathered from the attending physician, was that the patient had been ailing for some time with intermittent fever, and that he had shown symptoms of fever for several days previous to my visit. I was told that he had complained for some time past of *occasional attacks* of violent headache. The amputated limb was exces-

sively wasted. I found the patient completely comatose, having just gotten over a strong convulsion. I diagnosed "cerebritis" developed from "malarial fever." The patient never recovered consciousness; had frequent slight convulsive movements during the entire night, dying next day, November 26, 1878, at about 2 o'clock p. m.

CHARLES A. WELLS, M. D.

Your committee are of the opinion, after a careful perusal of all the evidence in the case, that the widow's application for a pension to herself, and to her children until they reach the age of sixteen years, as now provided by law, should be granted, and therefore report favorably upon the prayer of the petitioner (having in view precedents in similar cases), and recommend the passage of the bill (H. R. 5753) for the relief of Alice J. Bennit.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1779.

ISAAC P. LOCKMAN.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5451.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5451) "granting a pension to Isaac P. Lockman," having had the same under consideration, beg leave to submit the following report:

It appears from the evidence in the case in the Pension Office that the petitioner, according to Adjutant-General's report, "enlisted May 27, 1861; was sergeant Company H, Eighty-third New York Volunteers; promoted first lieutenant; discharged on order of resignation June 20, 1862; subsequent service as captain and lieutenant-colonel from September 5, 1862, to April 30, 1865." His declaration for pension was filed March 12, 1879, alleging that at Muddy Branch, Maryland, in November, 1861, he was taken sick with malaria and intermittent fever, caused by exposure, resulting in general debility and ulceration in right leg.

The Pension Office rejected the claim March 16, 1880, on the ground that—

> This man is not disabled by malaria or results. The enlargement of testicles and scar must be attributed to syphilis.
>
> T. B. HOOD,
> *Medical Referee.*

The report of the Surgeon-General sets forth that the medical records of the Eighty-third New York Volunteers prior to April, 1863, are not on file in his office.

The affidavits of William Slocum, A. Hamilton, and W. H. Hudson, neighbors of claimant, testify that he was physically sound at and prior to enlistment; that while in the Army he came home at intervals on sick leave, complaining of being troubled with malarial disease; and that since discharge he has been unable to work regularly at his trade, on account of alleged disabilities.

The affidavit of John T. Lockman, captain of claimant's company, testifies to his being ill with malarial disease during the month of December, 1861, and January, 1862, caused by exposure while located on the Upper Potomac.

The affidavit of Charles J. Nordquist, M. D., late surgeon claimant's regiment, states that he treated claimant during November and December, 1861, for malarial intermittent fever, contracted while in the line of duty at Muddy Branch, Maryland, and other points along the Upper Potomac River. That again, in June, 1862, he was taken seriously ill

with malarial fever, and affiant, being of opinion that he would not recover his health in the service, recommended his discharge. Is of opinion that claimant's present disability arises from the result of malarial toxæmia, caused by exposure above mentioned."

The affidavit of Benjamin A. Willis, late captain Company H, One hundred and nineteenth New York Volunteers, and A. Hamilton, lieutenant Company K, same regiment, states that about June, 1863, claimant received leave of absence, on account of sickness arising from old malarial troubles, and that when he rejoined his regiment, in July, 1863, he was unable to perform active duty.

Mrs. Mary Lockman, claimant's mother, testifies to claimant being physically sound at enlistment and prior thereto and to the existence of alleged disabilities since discharge.

Affidavit of Robert G. Roberts, formerly known as Robert Messenger, late quartermaster One hundred and nineteenth New York Volunteers, who testifies that claimant during his service in said regiment and from discharge to the present time has been afflicted with malarial disease and disease of right leg.

Affidavit of Charles Hall testifies to the existence of alleged disabilities continuously since discharge.

The affidavit of A. M. Woodward, M. D., states that he has treated claimant since November, 1874.

D. W. Vowles, M. D., testifies to treating claimant at different periods from 1875 to the present time; and that he is fully convinced that his condition during that period and at present is due to malarial toxæmia.

The claimant submits three affidavits as to his residence before and after service, origin of disabilities, and treatment therefor in service and since discharge.

The Adjutant-General's report shows that "he was honorably discharged, to date June 20, 1862, upon tender of resignation, on account of ill health, by Special Orders 147, Headquarters Department of the Rappahannock, but the papers upon which said special order was based are not on file with records of discontinued commands."

The Surgeon-General reports: "There are no records of the within-named regiment on file in this office prior to April, 1863."

The claimant was examined by the board of examining surgeons at Washington, D. C., three times, viz, October 25, 1879, March 9, 1880, and March 18, 1880. The first board found he was not incapacitated for obtaining his subsistence by manual labor, and that there is strong presumption of syphilitic taint.

The last two examinations showed that "he was incapacitated, and in the opinion of the board the disability did originate in the service; had a bad cough; complexion sallow; heart disease; if due to the service, three-fourths; no rating for disease of lungs; not disabled by malaria or results."

Your committee are of the opinion that, notwithstanding the somewhat adverse reports of the boards of surgeons at Washington, the mass of medical and lay evidence in the case proves that the petitioner is suffering and should be pensioned according to the rate of disability from disease contracted in the service and in the line of duty; and therefore your committee report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 5451) "granting a pension to Isaac P. Lockman."

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1780.

USEBUS SWEET.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 5158.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 5158) granting a pension to Usebus Sweet, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case that the petitioner was a private in Company G, One hundred and fifty-seventh New York Volunteers; enlisted August 27, 1862; discharged December 28, 1862; and filed declaration for pension November 24, 1876, alleging an injury to spine by a soldier falling upon him and striking him with the breech of his gun; he being asleep in his tent at the time at Arlington Heights, Virginia, and the occasion of the accident being the hurry incident upon a midnight alarm on the night of October 6, 1862.

The Pension Office rejected the claim on the ground, "Rejection on the record; disability existed prior to enlistment."

Milton B. Jarvis, M. D., family physician (filed February 1, 1877), swears that he has known claimant from boyhood; worked for him at time of enlistment, and was entirely sound at that time.

Abraham Tuttle, captain of claimant's company (filed February 1, 1877), swears that he was raised with claimant and associated with him constantly; he was entirely sound at his enlistment. He also remembers the night that claimant did not respond at the midnight alarm; afterwards saw him in his tent in great pain; suffered so for several days, when affiant assisted in placing him in ambulance and had him sent to hospital. Six weeks after he signed certificate for claimant's discharge.

George Daily and John J. McMasters, tentmates, swear they were present and saw the claimant receive the injury to his spine.

H. C. Hendricks, M. D., surgeon of the regiment (One hundred and fifty-seventh), filed February 1, 1877, testifies that he treated claimant for his injury; has personal knowledge of the occurrence, and of claimant's transfer to the hospital.

Dr. M lton B. Jarvis also testifies that he has treated claimant continuously from his discharge to the present for a disease of the spine, the result of an injury received while in the service. "Claimant came to affiant immediately on his return from the Army with spinal irritation, severe; affiant treated him for six weeks, and at intervals ever since."

The Adjutant-Geneal reports, dated October 31, 1862, "Absent, sick

in Green street hospital, Alexandria, Va.; November and December, 1862, absent; sent to hospital at Alexandria, October 12." Muster-out roll of company, dated July 10, 1865, reports him "discharged for disability January 11, 1863, at Washington, D. C."

Certificate of disability reports him "discharged at hospital, Third Corps, December 28, 1862," which date is accepted as correct.

The certificate of disability on which he was discharged says: "Disease of mitral valve, niatatic spinalis, produced by a fall at Hamilton, N. Y., before enlistment."

The board of examining surgeons at Syracuse, N. Y., June 6, 1877, could find no disability for which to rate him; they certify: "We cannot discover physical evidence of spinal disease, yet we may be wrong."

Your committee are of the opinion, notwithstanding the last certificate of the examining surgeons, that the petitioner did receive an injury to his spine in the service; the evidence is direct upon that point. The records show that he was treated in hospital and discharged for the disability. His family physician testifies to soundness at enlistment, and to treatment continuously almost since discharge. We therefore report favorably upon the prayer of your petitioner, and recommend the passage of the bill (H. R. 5158) "granting a pension to Usebus Sweet."

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1781.

WILSON M. THOMSON.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 3727.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3727) granting a pension to Wilson M. Thomson, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case, in the Pension Office, that the petitioner was a private in Company F, Ninth New Hampshire Volunteers, enlisted July 16, 1862, and discharged June 26, 1865, and filed declaration for pension September 11, 1872, alleging that while convalescing from an attack of measles at Camp Distribution he was taken with the chronic diarrhea, which has afflicted him more or less ever since.

The claim was allowed by the Pension Office, at $4 per month, May 31, 1880, as follows:

It would seem probable that one-half is even a liberal rating, for the disability now existing is largely due to lead poisoning.

The claimant was examined three times by examining-surgeons of the Pension Office, and their reports show a thorough diagnosis of the case. One examination only rated one-fourth of the total. The next examination gave him one-half of the total. And the last time he was rated at total, or $8 per month, "if it is proved that his present condition is the result of chronic diarrhea or measles, as it is obvious that he can perform little or no manual labor."

J. N. Butler, M. D., in an affidavit, February 13, 1880, says, "I believe that he was in sound health at enlistment; have known him constantly since discharge, and have attended him professionally from time to time; he has been seriously disabled by chronic diarrhea; his constitution is very much impaired by same, and during a great portion of the time he has been unable to attend to his ordinary duties."

Francis H. Wheeler, M. D., testifies to claimant's freedom from chronic diarrhea at enlistment, and that since discharge he has treated him therefor during warm weather.

The affidavit of George W. Toun and twenty-one other neighbors states that claimant was a healthy man at enlistment, and that since his return from the Army he had the appearance of a man broken down in health, and has been suffering from chronic diarrhea.

The report of Surgeon-General states, "February 9, 1863, admitted Mt. Pleasant *Hospital, Washington*, D. C., for treatment, general debil-

ity, and returned to duty June 15, 1863. In a list of candidates for invalid corps at Camp ———, Virginia, New England Division, September 3, 1865, appears Wilson M. Thomson, private, Company F, New Hampshire Volunteers. Diagnosis: bronchitis, diarrhea: how disposed of, second battalion."

Your committee, after a careful review of the evidence in the case, are of the opinion that the soldier should receive a full pension, as his disability is clearly the result of disease incurred in the service in the line of duty; and therefore your committee report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 3727) granting a pension to Wilson M. Thomson.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1782.

ARMSTEAD GOODLOW.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6481.]

The Committee on Invalid Pensions, to whom was referred the petition of Armstead Goodlow, of the District of Columbia, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence submitted to the committee that the petitioner was a private in Company E, Twenty-third United States Colored Troops, and that he is at present in receipt of a pension granted him by special act of Congress (Forty-fourth Congress), for injuries received while in the service and line of duty on the 30th day of July, 1864, before the city of Petersburg, Va., from which resulted total blindness.

The present application is for the arrears of pension from the date of his discharge, in accordance with the act commonly known as the arrearage of pension act, passed by the Forty-fifth Congress.

The evidence shows that the petitioner, Goodlow, was injured on the 30th day of July, 1864, by the springing of a mine before Petersburg, from which resulted partial blindness. The regiment was disbanded in Washington City some time in December, 1865; that petitioner at that time was suffering severely with partial loss of sight, and that about one year after the regiment was mustered out he became entirely blind. The committee are of the opinion that this is a meritorious case, and that the petitioner is entitled to the relief prayed for, and they therefore recommend the passage of the bill (H. R. 6481) granting arrears of pension to Armstead Goodlow.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1783.

WILLIAM GLESSING.

JUNE 12, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the petition of William Glessing, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the Pension Office that the petitioner was a private in Company G, One hundred and nineteenth New York Volunteers; enlisted in August, 1862, and discharged March 3, 1865, and filed declaration for pension January 25, 1876, alleging "disease of eyes and gathering in the head, affecting hearing." The claim was rejected by the Pension Office September 10, 1878, on the ground that "disability existed prior to enlistment (disease of eyes), sight of left eye defective before enlistment, as shown by the record."

In his application to Congress the petitioner states his disability is caused from an "explosion," but does not state place or time; and in the application to the Pension Office he states his disabilities are from "cold," lying on damp ground at Atlanta, Ga.

The affidavit of petitioner states his "inability to furnish medical evidence of non-existence, at time of enlistment, of the disease of the eyes and ears, or additional medical evidence as to his condition since discharge." There is filed the certificate of disability for discharge, setting forth as disabling causes "deafness, resulting from otorrhœa and defective sight of left eye, the latter existing at enlistment."

The Pension Office also decided that the claimant was "not disabled by deafness to a pensionable degree."

Your committee have reviewed the evidence carefully, but find nothing to warrant a reversal of the decision of the Pension Office, which seems to have been in accordance with the law and the facts of the case. We therefore ask to be discharged from the further consideration of the case.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1784.

CHARLES PARSHALL.

JUNE 12, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 4453.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 4453) granting a pension to Charles Parshall, having had the same under consideration, beg leave to submit the following report:

It appears from the evide nce before your committee that the petitione was enrolled as a private in Company B, Thirty-sixth Wisconsin Volun eers, March 25, 1862, and discharged (honorably) upon surgeon's certifi ate of disability February 22, 1865; that on February 11, 1863, after eing sick in hospital for three months, he obtained a sixty days' furlough o visit his home; that, while at home, he and a friend were gunning ogether on Canandaigua Lake, in a boat, and by the accidental discharge f his friend's gun he was wounded in the right arm, necessitating the mputation of the arm near the shoulder.

The petitioner is barred by law from obtaining a pension in the usual ay through the Pension Office, as he was on a pleasure "furlough" hen wounded. Your committee cannot, under the circumstances, recommend Congress to establish a precedent over the well-considered ule of law in the case, and therefore report adversely upon the prayer f the petitioner, and ask to be discharged from the further considera- on of the bill (H. R. 4453) granting a pension to Charles Parshall.

O

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1785.

WILLIAM H. McMAHON.

JUNE 12, 1880.—Laid on the table and ordered to be printed.

Mr. MASON, from the Committee on Invalid Pensions, submitted the following

REPORT:

[To accompany bill H. R. 6118.]

The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6118) granting an increase of pension to William H. McMahon, having had the same under consideration, beg leave to submit the following report:

It appears from the evidence on file in the case, in the Pension Office, that the petitioner was a second lieutenant in Co. K, Twenty-seventh New York Volunteers, and is now a pensioner on the rolls of the Pension Office, for disability caused by gunshot wound of head and shoulder, received at the Battle of South Mountain, Maryland, September 14, 1862.

"His claim for pension was allowed October 2, 1863, at total ($8 per month) of an enlisted man's pension, as it did not appear from the report of the Adjutant-General that claimant held that rank of second lieutenant until after the receipt of the wound. A reissue, however, was made November 9, 1863, allowing total in that rank from date of discharge. Payment of pension was suspended under the act of March 3, 1865, by reason of pensioner's employment, but resumed upon application from June 6, 1866."

The present action is for an increase of pension over that now allowed by the law, under the rulings of the Pension Office, to an amount "equal to the special rate provided for the loss of one hand and one foot, from the beginning of his original pension-certificate, less the pension heretofore paid him."

Your committee find that the petitioner, as before stated, receives a total pension according to his rank, and that the amount withheld was paid under the provisions of the act of March 1, 1879, and that petitioner "has never applied for increase, on account of increased disability, to the Pension Office." Under the circumstances, your committee recommend that the case be indefinitely postponed, and ask to be discharged from the further consideration of the bill (H. R. 6118) granting an increase of pension to William H. McMahon.

6TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1786.

OMPENSATION OF POSTMASTERS OF THE FOURTH CLASS.

UNE 12, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Ir. BINGHAM, from the Committee on the Post-Office and Post-Roads, submitted the following

REPORT:

[To accompany bill H. R. 3799.]

he Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 3799) to fix the compensation of postmasters of the fourth class, respectfully submit the following report:

Under existing law, act of June 17, 1878, *it is provided* "that in no ase shall there be allowed to any postmaster of this class a compensa-on greater than $250 in any one quarter, exclusive of money-order ommissions."

The general accounts of postmasters of the fourth class are audited nnually, and the compensation fixed upon the amount of work per-ormed and commissions allowed under act of June 17, 1878, but in no ase can there be an allowance greater than $250 in any one quarter.

In many offices of this class, located at watering places and summer esorts, the work performed allows in commissions amounts in excess of 250 for a quarter, but the Auditor, under the statutes, cannot give redit for the surplus, and the postmaster thereby loses all commissions nd allowances over the said $250.

The present bill will allow the Auditor of the Post-Office Department o give credit to such earned surplus, the sum total, however, in any one ear, not to exceed $1,000, exclusive of money-order commissions.

It seems just and fair that when the work is done the official should ave the full benefit of the commissions allowed by statute.

The annexed letter of the Hon. James N. Tyner, First Assistant Post-aster-General, is respectfully submitted:

POST-OFFICE DEPARTMENT,
OFFICE OF FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., February 25, 1880.

SIR: Answering your inquiry in regard to bill H. R. 3799, which reached me by this orning's mail, I will say that I presume it is intended to provide additional compen-ation to postmasters at watering places or other places of summer resort, whose labor nd responsibility is very much increased by the sojourn of visitors at such places. If his is the object of the bill I can perceive no objection to its passage. It is a verbatim opy of the present law except the few lines at the close of the first section, which I ave underscored with pencil lines.

Very truly,

JAS. N. TYNER,
First Assistant Postmaster-General.

Hon. H. H. BINGHAM,
House of Representatives, Washington, D. C.

The committee, for the foregoing reasons, report back the bill with the ecommendation that it do pass.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1787.

WILLIAM WEBSTER.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HILL, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 330.]

The Committee on Foreign Affairs, to whom was referred the joint resolution in relation to the petition, &c., of William Webster, a native-born citizen of the United States, who seeks the aid of the Government of the United States in furtherance of his claim against the Government of Great Britain, having had the same under consideration, submit the followingreport:

The joint resolution referred to this committee on the 9th day of February, 1880, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the petition of William Webster and the accompanying papers be transmitted to the Executive Department, with the request that the President take such steps as in his opinion may be proper and in accordance with international law, to secure to the said William Webster a final settlement and adjustment of his claim against the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by said William Webster, an American citizen, by purchase of the native chiefs of that country before its cession to and occupation by the Government of Great Britain.

The committee called on Hon. William M. Evarts, Secretary of State, and handed him the papers in the case, and by the Secretary's direction all the information upon the records and files of his department relating to the claim of Webster was furnished to your committee and is embraced in this report.

Information received from the Department of State:

Claim of William Webster, a citizen of the United States, against the British Government.

Memorial and papers handed to Secretary by the Hon. S. S. Cox, April, 1880.

This claim has been formally before the department since September, 1858, when a printed memorial, with accompanying papers, was referred for examination by President Buchanan. Notice of the occurrences from which the claim arises was, however, brought to the attention of the department by a letter of the 23d of February, 1841, from J. H. Williams, esq., then United States consul at Sydney, New South Wales. Mr. Williams in this letter, which was received October following, simply states that he transmits a copy of a letter addressed to him by Mr. William Webster, for the Secretary's perusal, and then leaves Webster to tell his own story. Webster, in the letter referred to, states that he is a citizen of the United States, a native of Maine; that he first went to New Zealand in 1835, and, being pleased with the country, remained there, and that during the succeeding five years he devoted himself to purchasing and improving and cultivating land, and teaching the natives the arts of civilization; that he made his purchases of the several tracts, shown on the map which accompanied his letter, from the native chiefs, and that he expended in such purchases £15,627, about $78,000. The total of the land amounts to five hundred thousand

acres; in addition to this he alleges that he expended large sums in making improvements, building wharves, improving harbors, and erecting houses. In 1840 the British Government acquired possession and sovereignty of the island by treaty concluded with certain chiefs, and from that New Zealand became a British colonial possession. Captain William Hobson, royal navy, was appointed lieutenant-governor of the province, and under instructions from the Marquis of Normandy, then secretary for the colonies, immediately proceeded to put in force such regulations as were prescribed by the home government in relation to the people, natives and foreigners, then inhabiting the island. By a proclamation, bearing date the 30th of January, 1840, the governor makes known the disposition of the government with respect to land titles; it is found on pages 12–13 of the annexed pamphlet.

1st. Her Majesty, taking into consideration the present as well as future interests of her subjects and also the rights of the chiefs and native tribes, does not deem it expedient to recognize as valid any titles to land which are not derived from or confirmed by Her Majesty.

2d. But, in order to dispel any apprehensions that it is intended to dispossess the owners of land acquired on equitable conditions and not in extent or otherwise prejudicial to the present or prospective interests of the community, a commission is appointed with certain powers to be derived from the governor and legislative council of New South Wales, to inquire into and report on all claims to such lands, and all persons having such claims will be required to prove the same before the said commission when appointed.

The treaty by which the British Government acquired title to New Zealand is dated the 6th of February, 1840, some days, as it is seen, after the above proclamation. Nothing is said in the proclamation about Americans or other non-British subjects, or what, if any, course the new government intended to pursue in regard to their land titles. There were many Americans besides Webster, and all of them refused to recognize the legality of the proposed commission. It was under this condition of things that Mr. Webster addressed his letter to Consul Williams, as the most certain and convenient way of bringing the facts to the notice of the Government of the United States, not as to himself alone, but as to all Americans similarly situated; he, however, formulated no claim at that time, and made no demand for indemnity, for, as he states himself, he had not then been despoiled of his lands.

The British authorities took possession of the most valuable of Mr. Webster's lands. He got none, although there was a *quasi* recognition of his title by the so-called land commission in the fact that, in 1858, the New Zealand Government confirmed to Mr. Ranulph Dacre five thousand acres of land which he, Dacre, had purchased from Webster in 1844. Besides the loss of his lands, Mr. Webster claims to have suffered large losses from interference with his business, especially shipping; he had then several vessels both in the coasting and foreign trade. In 1858, after all efforts to get his claims to the land recognized had failed, both in New South Wales and in England, he brought his claim before this government, Reverdy Johnson, A. Anderson, and J. W. Denver being then his counsel. His memorial was addressed to the President and referred to the State Department. A memorandum is found, dated the 15th of September of that year, headed *Report*, but not signed by any one, which appears to be all the action taken by the department at that time in relation to the matter.

The claim was again brought to the attention of the department in May, 1869, and on that occasion there is another memorandum of the Secretary, in Mr. Fish's own handwriting, dated May 11, which, like the report without signature of 1858, is adverse to the claim.

In the summer of 1876 a resolution passed the House of Representatives, calling upon the President for correspondence in regard to Mr. Webster's claim between the department and the Government of Great Britain. On the 13th of July of that year, this resolution was answered, and Mr. Fish, in his letter, says: "*No correspondence* has taken place between the Department of State and the Government of Great Britain in relation to the sequestration of the lands and property in New Zealand claimed by William Webster, an American citizen. In the years 1841 to 1844 certain correspondence was had between the legation in London and the foreign office of Great Britain in reference to the general question of land titles held in New Zealand by American citizens, but no correspondence has taken place in regard to the particular claim of William Webster." A copy of that correspondence * is inclosed, and it consists of—

1st. A letter of the 26th of December, 1843, from Mr. Everett to Lord Aberdeen.

2d. A brief reply from his lordship of the 3d of January following, saying the subject had been referred to the secretary for the colonies.

3d. A note of the 10th of February, 1844, from Lord Aberdeen to Mr. Everett, conveying the reply of his government, the chief point of which is the following: "That, in consequence of certain questions raised by the American consul at Sydney as to the rights and obligations of aliens in New Zealand, instructions were forwarded to the

* See pamplet, pages 29 to 34.

or of that island in the mouth of March, 1841, upon which occasion that officer rected to bear in mind the principle that where aliens had acquired land from efs prior to the proclamation of the Queen's sovereignty there, and that fact disputed, the claims should be acknowledged, but that where a doubt arose or the alien made a *bona fide* purchase of the land, the settler should be treated British subject and his claim disposed of accordingly."

following letter from Mr. Secretary Seward, of January 26, 1869, which appears e been transmitted to Congress with the above correspondence, is deemed perti- the conclusions reached in this report:

ave to acknowledge the receipt of your letter of the 15th relating to claims of s of the United States growing out of occupation of the islands of New Zealand authorities of Great Britain in 1840, and suggesting the incorporation of a clause ect to such claims in the convention for the general adjustment of private claims n this government and that of Great Britain. In reply, I have to state that it be inexpedient, in my judgment, to attempt any modification in the conven- lating to claims, which is now awaiting ratification, and that it will be pref- if the provisions of that convention shall be found insufficient to admit the ation of the claims to which you refer, that they should be made the subject of te and independent negotiations at another time."

reference to what proceedings were had before the British land commission at Auckland, touching Webster's titles or claims, there are no means of ascer- their nature or the mode of procedure. The following letter, bearing date the f March, 1845, from Governor Hobson's (Fitzroy's) private secretary to Mr. r, and which is attached to Webster's memorial as an exhibit, will convey lea of the result, so far as their proceedings affected Webster:

Schedule of titles proved before commission.

laim.	Acreage.	Situation.
	250	Coromandel Harbor.
A	600	Coromandel Harbor.
B	1,500	On the river Thames.
C	2,500	Coromandel Harbor, Taupiri.
D	1,000	Coromandel Harbor, Waiau.
E	100,000 about.	Great Barrier Island.
F	300 about.	Motutanpiri.
G	40,960	Point Rodney.
H	.....	We have not been able to trace this claim.
I	3,000	On the Nickiaranga Creek.
J	6,000	Big Mercury Island.
K	80,000	Left bank of the river Brako.
L	3,000	Wanaki, on the river Waihow.
M	2,000	Southeast side of the river Weahako.

GOVERNMENT HOUSE, *March* 10, 1845.

I am desired by the governor to acquaint you that his excellency has exam- ıd taken advice respecting your land claims marked 305 H and 305 I, and is sorry himself precluded from authorizing any further grant made to you at present, ount of the largeness of the grants already made in your name. The governor me to say that the land which you now hold in undisputed possession will prob- e granted to you eventually.

I have the honor to be, sir, your most obedient servant,

J. W. HAMILTON,
Private Secretary.

the following, three days later, from the same source, shows that while Webster sleep on his rights, his watchfulness availed him little in securing from the l authorities either respect for or a recognition of those rights which he, at ınd not without reason, conceived to be well established:

GOVERNMENT HOUSE,
Auckland, March 13, 1845.

I am desired by the governor to acknowledge the receipt of your letter of the stant, in reference to "spars" taken for the use of Her Majesty's navy by Com- r Wood, of Her Majesty's store-ship "Tortoise," from off land in the Bay of , to which, at the time, you laid claim.

ıswer to your claim for compensation, I am desired by the governor to say that

he will refer the case for the decision of the home government, being unable himself to do anything at present.

I have the honor to be, sir,

J. W. HAMILTON,
Private Secretary.

Mr. W. WEBSTER,
Auckland.

One other fact it is proper to state here. In his memorial presented to the President, in 1858, Mr. Webster exhibits copy of his title-deeds, from the chiefs from whom he purchased, for the several tracts of land to which he laid claim, and which appear very distinctly markd and described by metes and bounds on a map which also accompanied the memorial referred to, and which is annexed as a part of this report.

Soon after the report of Mr. Secretary Fish to the House of Representatives (July, 1876), Mr. Webster, with a view to the prosecution of legal remedies in the courts of Great Britain, laid his case before eminent counsel in New York. From the Hon. J. W. Edmonds he had already, in 1861, obtained a written opinion, a printed copy of which is hereto appended. Upon the advice received still more recently from lawyers equally distinguished, he proceeded to London and there submitted the case to a learned English barrister. He was advised that the home courts had no original jurisdiction in the matter; that any legal proceedings contemplated must be commenced in the New Zealand tribunals, and that the case could reach the home courts of Great Britain only, if at all, by appeal from the colonial decisions. He next, through the interposition of an English friend, obtained a hearing at the colonial office, and then pressed his claim as best he could, but there also he was courteously informed that nothing could be done in England; that his recource must be to the colonial authorities of New Zealand, and that the home government would only take cognizance of the subject upon such reports as might ultimately be sent from the local government authorities of New Zealand. Having, as he considered, already exhausted all reasonable means of redress before the colonial authorities, and entertaining no hope of a different result from a repetition of these efforts, Mr. Webster abandoned any further attempts to get redress by direct appeal to the British Government, returned home, and has now presented his memorial to Congress.

A copy of this memorial was handed to the Secretary of State by the Hon. S. S. Cox, chairman of Committee on Foreign Affairs, with request for information.

The facts above summarized are brought together for the twofold purpose of showing the history of the claim and its present status.

These are the facts and circumstances, supported as they are by ample documentary and circumstantial proofs:

I. That Webster is a native-born citizen of the United States, and that he has never done any act or taken any steps looking to a change of his nationality or that in any way impairs his rights as an American citizen.

II. That he purchased the lands in New Zealand, which he claims in his memorial, from the proprietary chiefs of that country.

III. That the proprietary as well as the sovereign rights of the native chiefs and rulers of New Zealand were formally admitted and acknowledged and recognized by the British Government prior to the acquisition of the country by Great Britain.

IV. That the cession above referred to, by the chiefs of New Zealand to the British Crown, was made by the treaty of the 6th of February, 1840.

OPINION OF J. W. EDMONDS, COUNSELLOR-AT-LAW.

(Copy.)

It seems to me quite apparent from Lord Normandy's letter of instructions to Lieutenant-Governor Hobson, that the Colonial Department of the British Government were at that time aware of Webster's purchases of land and intended to cut them off.

Or at least, if they were not aware of it, and that was not the direct object of those instructions, they were so framed as to produce that result.

I. The colonial secretary admits the sovereignty of the natives and their paramount title to the land.

II. He avows that Great Britain has no purpose of conquest in view, but to obtain sovereignty by treaty and title by grant from the natives.

III. Starting with these views, which would commend themselves to the regard of the civilized world, the secretary has, however, in view another purpose, and that is to get rid of the titles which "land jobbers," as he calls them, may already have acquired.

IV. He proposes to attain that purpose only so far as British subjects are concerned. Because the basis already admitted and international law would forbid British in-

:erference with titles already acquired by persons not British subjects from natives whose sovereignty and title were alike conceded.

V. Therefore it was that all proceedings by Lieutenant-Governor Hobson and his government aim nominally at British subjects alone, and it was only by regarding Webster as a British subject that any dealing whatever could be had with Webster's claim.

1. Hence doubtless it will be found to be a position insisted upon by the British Government that Webster was a British subject.

2. For if he is not, the whole action of the British authorities as to his property would be entirely without warrant.

VI. But there is no positive limitation of authority to British subjects; it is a limiation by implication only, and Lieutenant-Governor Hobson might well understand Lord Normandy's instructions as comprehending all purchases from the natives as well by others as by British subjects.

VII. But whatever the limitation or extent of action in this respect, the purpose of he colonial secretary to destroy individual grants, like those to Webster, is very plain.

1. He avows that circumstances beyond their control have compelled the British Government to alter the course which recognized the title to the soil and to the sovereignty to be indisputably in the natives.

The sending Captain Hobson there was to carry out this change of views, and that ould be done only by getting sovereignty and title both vested in the British Government.

This purpose thus avowed runs through the whole action of the British authorities.

2. He avows as one reason for sending a governor there to be that "extensive cesions of lands have been obtained from the natives."

This consideration is not confined by him to cessions to British subjects, but is roadly stated in terms embracing *all* cessions.

3. He avows his object to be to obtain a contract that no lands shall be ceded exept to the Crown of Great Britain.

Thus clearly showing a purpose beyond mere sovereignty, and a purpose as to title t once in conflict with Webster's claim.

4. He avows a hostility to large landholders, which of itself brings him in direct conlict with us.

5. He avows that the British Government will not acknowledge *any* title (whether eld by British subjects or otherwise) which either has been or may be acquired without its sanction, and instructing his lieutenant-governor so to proclaim "immediately n his arrival." He thus *in limine* courts a conflict with our claim.

6. In his reservation to prevent alarm among actual settlers of lands acquired by hem on equitable conditions, he is careful to exclude acquisitions "upon a scale which must be prejudicial to the latent interests of the community."

Thus establishing a conflict with us, inevitable from the magnitude of our claim, at he same time that other settlers are quieted.

7. He instructs his lieutenant-governor that the embarrassments occasioned by such arge claims will demand his earliest and most careful attention.

And it is worthy of observation that this is pressed on the lieutenant governor's ttention even more vehemently than the preservation of the title or the sovereignty f the natives.

8. He directs a commission to be formed to ascertain what lands are held by grants rom the natives, and how far they ought to be respected.

But this is in terms confined to British subjects, and excludes all inquiry into grants o others, and it is worthy of remark that this is the only part of the instructions on he subject of title which is confined to British subjects.

9. He directs an annual tax on *all* uncleared lands, with the avowed object that a forfeiture for non-payment of the tax may restore them to the demesne of the Crown.

10. And, finally, he avows his main object by saying, "Having by these measures bviated the damages of the acquisition of large tracts by mere land-jobbers, it will e your duty to obtain cessions to the Crown," &c.

So that the Crown having obtained title at a cheap rate from the natives might obain a revenue by selling at a higher rate.

Such are the clearly avowed purposes of the British Government as contained in the nstructions of the colonial secretary to the officer sent to take possession of New Zealand. And the acts of that officer are clearly within the spirit of those instructions.

Those acts, therefore, are not merely trespasses on his part for which he would be ndividually responsible, but are governmental in their character, and for them the government is responsible to the party aggrieved.

(Signed) J. W. EDMONDS.

TRINITY BUILDING, *New York City*, 1861.

The committee, then, from a careful examination of the information supplied by the Department of State and of that found in other official

Consul Williams, and Consul Williams's letter to the Secretary of Pamphlet, pages 19 *to* 21.)

The proprietary as well as the sovereign rights of the native chie rulers of New Zealand were formally admitted and recognized British government prior to the acquisition of the country by Britain. (*See Lord Normandy's instructions to Captain Hobson. Pa pages* 17 *to* 19.)

The cession by the New Zealanders to Great Britain was mad treaty dated at Waitangi on February 6, 1840. (*See page* 14 *in pam* And Webster had, some years previously, purchased his lands fr same chiefs and others who were parties to that treaty, and he titles were paramount.

The right of American citizens to their land purchased from the was recognized by the British Government. (*See Lord Aberdeen' to Hon. Edward Everett. Pamphlet, pages* 32 *to* 34.)

There is no intimation by the British authorities, in any of the in the case, that Webster's land purchases were not *bona fide* an valuable consideration; nor does your committee find any ref upon his personal character for integrity and fair dealing.

That Webster's claim for indemnity against the Government of Britain for the value of his lands and other property, of which h deprived without warrant of right or law, with the increments a from improvement, enhancement of value, &c., is a just and subs claim, and one that presents just grounds for the interposition of h government.

Your committee do not deem it necessary to burden this repor copious citation of authorities. The doctrine is clear and incontes and has been accepted and established by Congress in regard duty of the government in the case of a citizen having a *bona fid* against a foreign government, the payment of which is refused been unreasonably delayed.

Your committee therefore recommend the adoption of the accon

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1788.

MARY ANN HARE.

JUNE 12, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BRIGHT, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 6482.]

The Committee on Claims, to whom was referred the bill (H. R. 2797) for the relief of Mary Ann Hare, having had said bill under consideration, do respectfully report:

That on or about the 25th day of May, 1877, the pension agent of the United States at Nashville, Tenn., deposited in the post-office at said city a certain check, numbered 40,117 for $1,123.60, in favor of Mary Ann Hare, the same being in full for the amount of pension claim found due to the said Mary Ann Hare; that the said check was lost in transmission to the person to whom the same was addressed, and has never since said date been recovered; that the said check has never been presented for payment and has never been paid, and the said pensioner has never received any benefit therefrom, nor has any other person on her account. These facts are fully supported by a communication from the department having the matter in charge. It is proposed that the pension agent at Nashville, Tenn., be instructed to issue a new check payable to the order of the said Mary Ann Hare, for the said sum of $1,123.60, in lieu of the check so lost, upon the execution of a bond by the said Mary Ann Hare, with sufficient sureties, to be approved by the Secretary of the Interior, in due form of law, to save the United States harmless against any loss or injury by reason of such duplicate check or the payment of the original; and provided further, that the Secrecary of the Interior be satisfied that the said original check is lost. With these conditions the committee recommend the passage of the accompanying bill.

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46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1789.

ACCOUNTS OF COMMITTEE ON DEPRESSION OF LABOR.

JUNE 16, 1880.—Laid on the table and ordered to be printed.

Mr. HENRY, from the Committee on Accounts, submitted the following

REPORT:

The Committee on Accounts respectfully report that they have examined and audited the account of Hendrick B. Wright, chairman of the Select Committee to inquire into the causes of the depression of the industries of the country, and especially labor.

The chairman of the committee is charged with the appropriation of the House, out of the contingent fund, of $5,000. He is allowed credit for disbursements, which are accompanied with the proper vouchers and his own statement, for the sum of $4,549.23; balance due, $450.77. To meet this, Mr. Wright exhibits the receipt of the Treasurer of the United States for $450.77, paid by him into the Treasury, which $450.77 settles this account in full.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1791.

DONNELLY vs. WASHBURN.

JUNE 16, 1880.—Recommitted to the Committee on Elections and ordered to be printed.

Mr. MANNING, from the Committee on Elections, submitted the following

REPORT:

ERRATA.

House Report No. 1790, 2d Sess. 46th Cong., was not printed. See House Report No. 395, 3d Sess. 46th Cong.

BRIBERY.

The first question which they considered was the question of bribery.

They find that bribery was committed on behalf of the sitting member, Mr. Washburn, by his friends, by members of his district committee, and by personal, political, and business agents; that this bribery was not confined to any portion of the district, or to any one town or county, but that it extended throughout a region of country nearly four hundred miles long and one hundred miles wide; and they further find that in many cases the bribery has been traced home directly to Mr. Washburn himself. The committee give herewith an abstract of the testimony in some of these cases.

Charles Berens, a democrat, the postmaster of the village of North Prairie, Morrison County, (situated about one hundred miles from Minneapolis), testifies, (p. 300 printed testimony,) that prior to the election of November 5, 1878, he wrote and mailed a letter *directly to the sitting member, Washburn*, in which he said that he would give his support at the election to him, Washburn, for $50. This letter evidently reached the sitting member, for Berens testifies that he received a letter in reply to it from Keith, the postmaster at Minneapolis, a political friend of the sitting member, in which Keith said, "he was glad that Berens would work that way"; he, Keith, further stated that he would give Berens's letter to J. V. Brower, one of the republican United States land officers at Saint Cloud, and that Brower would attend to the matter. J. V. Brower testifies, (p. 246), "Charles Berens wrote a letter to Minneapolis demanding fifty dollars, for which he was to support General Washburn, (the sitting member); the letter was sent to me by some one in connection with the campaign; I can't say whether by the committee, or by General Washburn, or by some one for them." Brower admits the receipt of $50 from Washburn or his committee, and may

have got more. Berens, (p. 300,) and Brower, (p. 246,) both agree that Brower visited North Prairie, Morrison County, and called on Berens; Berens says: "Brower said I should work for Washburn and he would see me all right." He says Brower did not pay him any money because he, Brower, did not trust him—he thought he was supporting Donnelly Brower testifies: "I advised General Washburn, [the sitting member], or some one for him, after I had been advised that no arrangements of that character could be entered into" [that is, the purchase of Berens's support for $50], "or words to that effect, that he should not enter into such arrangements with Charles Berens, or any one else."

Here it is clearly established that there was a negotiation between a democratic voter and Mr. Washburn, the sitting member, the one to sell his vote, (for his vote is implied in his "support,") for $50, and the other to buy it. The letter is answered for Washburn by Keith, his friend; the proposition is accepted with thanks, and the letter is delivered to a Federal official who goes, with the letter and with Washburn's money, or the money of Washburn's committee, in his pocket, to see the party and consummate the transaction. It is of no moment that Berens finally declined to receive the money. The offense of bribery was complete when one party offered to sell his vote and the other agreed to buy it. (See Russell on Crimes, vol. 1, p. 159; Hardinge *vs.* Stokes, 1 M. & W., 233.) Brower reports to Washburn, or some one for him, that the "arrangement" could not be entered into.

There is no denial of this testimony and no attempt to impeach Berens or Brower.

If Washburn had not been ready to use money to corrupt the voters of his district he would have resented the proposition made to him by Berens as an insult; on the contrary, he appears to have been as ready to buy Berens's vote as Berens was to sell it. That Brower was Washburn's agent clearly appears; and when Brower told Berens that he should work for Washburn and he (Brower) would "see him all right," it was in effect the same as if Washburn himself had spoken those words. In short, as Keith and Brower simply acted as agents for Washburn, the transaction may be thus briefly stated:

1. Berens tells Washburn he will sell him his vote for $50;
2. Washburn thanks him and tells him to go ahead and it will be all right.

There is in the third Congressional district of Minnesota an unorganized county named Kittson, situated in the northwestern corner of the State, and adjoining the line of the British possessions; it is more than 400 miles from Minneapolis. In the fall of 1878 this county was a wilderness; there were probably, as appears from the testimony, not ten actual settlers in the entire county, (see pp. 125–144). Between the 8th and the 16th October, 1878, (p. 125), two men, named Arthur J. White and E. P. Webster, entered into a contract with the Saint Paul and Pacific Railroad Company, which was then constructing a railroad through said county, to get out cord-wood for the use of the railroad company. Between the dates named they collected together some eighty or ninety wood-choppers in the city of Minneapolis, and proceeded to Kittson County to cut this cord-wood. The men so hired were principally harvesthands and tramps who had not been in the State long enough to vote; they were in Kittson County for a temporary purpose, and were therefore not entitled to vote under the laws of Minnesota; [see Rev. Stat. Minn., sec. 55, p. 66,] the county was unorganized and the election precincts were established in the county ten days before the election, by the governor, without authority of law, and were therefore legally

not election precincts; there were no registration lists at the polling places; the voting took place in railroad depots or in railroad cars; there were no proper ballot-boxes, [cigar boxes and candle boxes without locks and keys, as required by law, being used as ballot-boxes]; the judges were not sworn, and, in short, almost all the requirements of the laws of the State for the holding of elections were ignored.

At one of these precincts, to wit, Tamarack River, these eighty or ninety wood-choppers, hired by Webster and White, voted. There were only four actual settlers, (p. 125,) in the precinct; and these alone were presumably entitled to vote. The vote cast was 109 for Washburn and 1 for Donnelly. The testimony of George C. Morton (p. 125), John Mulvey (p. 120), Arthur J. White (p. 305), and E. P. Webster (p. 297) shows that these eighty or ninety wood-choppers were urged and requested by Webster and White, the wood-contractors, to vote for Washburn; they were told that if they voted for Washburn they would be paid, (p. 125,) from $1.65 to $2.20 each for their votes; they did vote and they voted for Washburn, and they were so paid; *and they refused to vote at all unless they were paid*, (p. 297). The total sum paid by Webster and White to these men for their votes was $160 or $170, (p. 307). It further appears, by the admission of Webster, that the contractors expected to be repaid this money (p. 297) so paid out for these votes.

It also appears (see p. 121) that in addition to the eighty or ninety wood-choppers so bribed to vote for Washburn, the contractors Webster and White gave two trappers their board for a week, on condition that they would vote for Wasburn; and they did so vote.

George C. Morton testifies (p. 126) that White told him in the presence of Webster that they, Webster and White, were to get $200 for their services at the election, in behalf of Washburn. The money paid out by them for votes was repaid to White, one of the firm, (see p. 127), by Major Hale, of Minneapolis, the business manager of the contestee, Washburn, eight days after the election, by a check for $182; and the check was cashed for White by one George B. Webster, the paymaster of the Minneapolis and Saint Louis Railroad Company, of which the contestee, Washburn, was and is president. White admits, (p. 307,) that he was repaid the sum of $168 or $172, being the money so paid for these 80 or 90 votes, by said George B. Webster, paymaster of contestee's railroad company. There was no connection between the Saint Paul and Pacific Railroad for which the wood was cut, and the Minneapolis and Saint Louis Railroad, of which contestee is president; the one runs from Saint Paul northwestwardly to British America or Manitoba; the other runs from Minneapolis southwardly towards Saint Louis; and the place where the wood was cut was between 400 and 500 miles distant from Minneapolis.

Here, then, is a case of bribery by the wholesale, and it clearly appears that the money that was paid for the bribed votes was repaid *in Washburn's office by his business manager*, by a check which is cashed by the paymaster of his railroad company.

Emil Shagren, a Swede, a Greenbacker, a laboring man, resided at the date of the election in question at Minneapolis, Minn. (p. 15). He was an active supporter of the contestant, Donnelly, and had been a delegate to the Greenback Congressional convention. About the 15th October, 1878, a friend of Washburn, named William Chase, urged him to go to Washburn's office to see Major Hale, his business manager, (the same person who paid for the 80 or 90 bribed votes at Tamarack River), because Major Hale would "convince" him that he should vote for Washburn. Shagren declined to go. The invitation was several times

repeated. At length Shagren went to Washburn's office. He was met by Major Hale, who was evidently prepared by Chase for the interview. Hale commenced by asking him if he wanted greenbacks. He, Hale, then referred to the fact that Shagren had been a delegate to the Greenback convention and was a supporter of contestant, Donnelly. Hale told him that he would see that he, Shagren, voted for Washburn. This ended the first interview with Hale. Soon after Shagren got out of work. Chase again urged him to go to see Hale and he, Hale, would give him "a job"; and he gave him a sealed letter to Hale. On the 19th October, Shagren went to *Washburn's office* again. He gave the letter to Hale; Hale read it and went into another room and conferred in whispers, which the witness overheard, with C. C. Washburn, *brother of the sitting member* and ex-governor of Wisconsin. Hale then came out of this room with a $5 bank note folded between his fingers; sat down beside Shagren, put his hand on his lap, and said: "Emil, I will tell you what I want of you; I want you to vote for W. D. Washburn, (the sitting member,) and use your influence and work among your friends for the election of Governor Washburn, (the sitting member,) and I will pay you $2 a day from now to the close of the election"; and "he figured it up and said it would be $36, besides my expenses and money to spend among the boys." "He told me to bring my bill there to Mr. Washburn's office the day after the election and I would get my pay." Shagren made no answer. Then Hale took the $5 bank note, which he had brought out of the room where he conferred with the brother of the sitting member, and delivered it to Shagren saying; "Emil, here is $5; go and use this among the boys, and drop in occasionally and I will give you more." It is true that Shagren voted, worked, and made speeches for Donnelly subsequent to this interview; and in one of these speeches and before the election, he stated, publicly, the particulars of this attempt to corrupt him and secure his vote; but the crime of bribery was complete when Washburn, in his own office, through his business manager, and in the presence of his brother, paid Shagren $5 and promised him $36 more; and Shagren accepted the $5. It is of no moment whether Shagren intended to vote for Washburn or not, or whether he did or did not so vote. An attempt was made to impeach Shagren by showing that he was contradicted by John C. Oleson and Ole H. Mahler; but Oleson, (p. 92,) while he denies that he told Shagren that he was paid $2.00 by William Chase for his vote, admits that he was paid $2.00 by William Chase for services at the election; and Mahler, (p. 117,) while he denies that he told Shagren that he had received $25.00 from Washburn, admits that he received $15.00 or $25.00 from somebody, he declines to say whom, and he declines to say whether or not he peddled tickets with Washburn's name on them. So that these witnesses confirm instead of impeaching the substantial truth of Shagren's testimony. How could he have known the facts stated unless these parties told him?

The proof in this case seems to your committee to be very conclusive: the party bribed was an active opponent of Washburn and warm supporter of Donnelly, and these facts were known to Washburn's business manager. He belonged to a different political party from the sitting member. The bribery takes place *in Washburn's office and in the presence of his brother*. The witness, Shagren, was coaxed there under the promise of a job, and advantage taken of the fact that he was out of work and poor. A distinct and deliberate proposition is made to him to pay him a given sum for his vote and support, and part of the money is paid to him.

Bernard Cloutier, (see p. 211,) resided in Minneapolis at the time of the election, and sold farm machinery. He was, and had always been, a Democrat, and generally took an active part in politics. About a week or ten days before the election he met John Baxter, a friend of the sitting member. Cloutier told him, in answer to a question by Baxter, that he, Cloutier, did not intend to take any part in the election. He says, "I told him that I had made up my mind to take no part in the election, *as I had heretofore been promised a good deal and never got anything for it.*" Thereupon Baxter requested witness to see Charles W. Johnson, (secretary of the Republican central committee of the third Congressional district). Two or three days thereafter Baxter met Cloutier again and asked him if he had seen Johnson. Cloutier said no. Baxter said that was queer, as Johnson had promised he would see Cloutier. Baxter then took Cloutier to *the office of the sitting member, Washburn*, and they told him there that Johnson had just gone out. An hour afterwards Cloutier was in Christian & Dean's office, when a gentleman came in and told him that "*General, Washburn [the sitting member,] wanted to see me, [Cloutier,] at his [Washburn's] office.*" Cloutier went to Washburn's office, and there met Charles W. Johnson and Dr. Keith, (the postmaster of Minneapolis, and the same party who thanked Charles Berens for his offer to sell his support to Washburn for $50). Johnson wanted Cloutier to go out and electioneer for Washburn. Cloutier said he would do so if he was paid for his time and expenses. Thereupon Johnson told him to start out. The next day Johnson met Cloutier at the post-office and paid him thirty dollars. The following Wednesday Cloutier met Johnson again *at Washburn's office.* "I told him I wanted some more money. He asked me how much I wanted, and I told him I wanted twenty dollars. *He, [Mr. Johnson,] went into the next room and commenced talking with Mr. Washburn, [the sitting member]. He came back and handed me twenty dollars.*"

The witness, Cloutier, states in his cross-examination that he was in favor of Mr. Washburn in the first place; but it appears by his examination in chief that he had made up his mind to take no part in the election, *because* he had been previously promised bribes which were not paid; and thereupon he was paid $50 to convert him from that position of neutrality and indifference into a warm supporter of the sitting member. In other words, the payment of that sum of money secured to Mr. Washburn a support and influence which he would not have had without it. It is fair to presume that if the vote and support of this mercenary politician could have been had without the payment of money, the $50 would not have been paid.

The contract of bribery was made by the secretary of Washburn's committee in Washburn's office, and part of the money was paid in Washburn's office in his presence, and under circumstances which create a strong presumption that it came from Washburn's pocket. That is to say, Cloutier asks Johnson for $20; Johnson goes to Washburn and returns with the money and pays it to Cloutier.

Here, then, we have four cases of bribery, involving 96 bribed votes, brought home to the sitting member in the clearest and most conclusive manner. In the first case, the negotiation is with Mr. Washburn himself; in the next, the money which bought the votes is repaid in his, (Washburn's,) office by his business manager; in the third, the bribe is offered and the money paid in Washburn's office by his business manager and in the presence of his brother; and in the fourth case, the bribe is offered and the money paid by the secretary of Washburn's committee in Washburn's office, and part of the money paid in Wash-

burn's presence, and probably out of his pocket. It seems to your committee that this evidence is sufficient to convict Mr. Washburn of bribery in any court in the world.

And yet in the face of such an array of testimony Mr. Washburn is dumb. He had forty days in which to rebut this testimony; he could have taken the stand himself, to explain or deny the Berens matter; he could have procured the testimony of his business manager, Hale, to contradict Shagren and Morton; he could have called Johnson to contradict Cloutier; he could have sworn his brother, Ex-Governor C. C. Washburn, to deny that he was present and conferred with Hale, and also to rebut the natural presumption that he, (C. C. Washburn), furnished the $5 with which Hale bribed Shagren. He did nothing of this kind; he denied nothing; he called not a single witness to rebut this or anything else in the mass of testimony showing bribery. Certainly no lawyer, and no layman familiar with human nature, will pretend that it was Mr. Donnelly's duty to place these parties who held such close and intimate relations with Mr. Washburn on the witness stand. He might just as well be asked to make Mr. Washburn his witness. In these matters he and his friends were like the Siamese-twins, living, breathing, and moving together. Every part of this testimony was brought home to the knowledge of Mr. Washburn, as he was represented by counsel at the hearing of each witness. It will not do for Mr. Washburn to say that he did not wish to "dignify the case of the contestant" by calling witnesses in rebuttal. His own character as a man of honor demanded some denial or explanation of this testimony, which traces the bribery of 96 voters right to his own office, to his business manager, to his brother, and to himself. If he did not consider his own reputation affected by such charges, he at least owed it to his constituents, and to the Congress of the United States, to prove that he had not gained a seat in the House by unworthy, dishonorable, and criminal practices.

Having failed to rebut this evidence by counter testimony, the presumption of law becomes conclusive that he did not do so because he could not do so. He concedes thereby the truth of every statement made by contestant's witnesses; and his silence is an admission of his guilt. It is a well understood principle of law that admissions of guilt "may be implied from acquiescence of the party, whether it be acquiescence in the conduct or language of another." (Greenleaf on Evidence, vol. 1, sec. 27, & sec. 197.) "If a material averment, well pleaded, is passed over by the adverse party, without denial, whether it be by confession, or by pleading some other matter, or by demurring in law, it is thereby conclusively admitted." (*Ibid*, sec. 27.) And in this case the failure to rebut or impeach the testimony of these witnesses as to bribery, is a confession of the truth of their statements and of the guilt of the party.

Your committee have dwelt at length upon these four cases, because they reach home directly to the sitting member; but they constitute but a small part of the testimony showing bribery.

At Crookston, in Polk County, the testimony shows, (p. 223,) that but 85 legal votes were cast, while 258 votes were returned as cast. A large part of these illegal votes were cast by parties at work upon the construction of a railroad; they were not inhabitants of the township; they had no right to vote there. It is proved that 35 or 40 of these were paid for their votes by the railroad company; their tickets were furnished them by the agents of the company; they were Washburn tickets, and they all voted for Washburn. The men so paid to vote for

Washburn were Democrats. They were at work shoveling dirt around the round-house. Besides these, two hand-cars, loaded with railroad-men, also voted—about sixteen of them.

William Johnson (see p. 190) was one of a gang of 17 railroad laborers; they were at work 14 miles away from Crookston, and outside the election precinct; they had no right to vote at Crookston, but 16 of them did so vote, and they were paid for their votes by the railroad company; the agents of the company furnished them with their tickets—Washburn tickets; and they voted for Washburn; they would not have voted at all if they had not been so paid, (p. 191).

D. M. Robbins (p. 34), of Saint Paul, had a railroad contract to help build the railroad through Kittson County; had 150 men working for him 15 miles from Two Rivers, Kittson County; about 100 of these men went with him on a construction train to Two Rivers to vote; these men, except about 30 or 40, did vote; they were all paid for their votes the same amount they would have earned if they had continued to work; the railroad company ran the train for their accommodation; *the voting-place was a railroad-car*, which stood on a side track; there was no house at Two Rivers station of any kind. As the vote at Two Rivers was 74 for Washburn and 1 for Donnelly, the bribed voters must have voted for Washburn. It further appears, (p. 36,) that the railroad laborers working for this witness at Tamarack River voted there. These made up the balance of the 109 votes polled at that place.

Dennis Reardon testifies (p. 144) that he was one of a gang of more than fifty railroad hands that voted between Middle River and Tamarack River; at Two Rivers the voting-place was a box-car, the ballot-box was a candle-box; there were no tickets there but Washburn tickets. These fifty railroad men lived in box-cars and were moved forward as the work progressed. They were all paid for voting by the railroad company; many of them were Democrats. There were no houses in sight at that place, and of course no residents of that locality.

This testimony establishes the fact that at Crookston, Tamarack River, and Two Rivers, there were 161 votes cast by railroad workmen, who were not residents of those localities, were there for a temporary purpose, and were not entitled to vote; and that they were all paid for their votes; that they voted for Washburn and would not have voted if they had not been paid.

We have seen that J. V. Brower, (p. 244), one of the United States land officers at Saint Cloud, Minn., was furnished with the letter of Charles Berens to Washburn, in which Berens offered to sell his vote to Washburn for $50. It further appears that Brower received from Washburn, or his committee, money to visit Berens and to make a canvass of certain counties; how much does not appear, as Brower's memory is very oblivious of these details. Brower admits, (p. 245,) that he left money at different places in Todd and Morrison Counties during his canvass for "legitimate political purposes"; that he did this in the interest of Mr. Washburn; and he, Washburn, knew he was working for him, (p. 252); he visited five towns in Morrison County. He considers it perfectly legitimate to hire Democrats to work with their teams in behalf of the Republican party. He hired a number of men in this way; he cannot remember how many; it may have been twenty or one hundred; neither can he recollect whether he spent $50 or $500 in this canvass of Morrison and Todd Counties.

This testimony shows that an agent of the sitting member, acting at his request, with his knowledge and by his authority, and furnished with his money, or the money of his party, went out into the counties of Todd

and Morrison, 120 and 150 miles from Minneapolis, upon a mission of corruption; that he bought up probably 100 voters and spent probably $500 in the work; and although the events transpired but a few weeks before his testimony was taken, he pretends that he does not remember the names of the voters he bought, the amount he paid out, or the number of persons bribed. The bribery was accomplished under the thin disguise of employing Democrats to work at the polls for the sitting member. He admits that one of the parties so bought was George Geissel, of North Prairie; he paid him a sum of money—may have been $5 or $20—for the use of a team (p. 246). He paid Thomas Kitowski a sum of money, probably $25 or $30, to peddle tickets for Washburn at the polls, and for cigars to be furnished the voters, (pp. 245, 253). Kitowski was a Democrat.

Having established the close relations of Brower with the sitting member, and his authorized agency for him, let us follow him in his canvass:

John Fleckenstein, (p. 291), of Rich Prairie, Morrison County, a farmer; his "politics ain't much"; Brower called to see him; he told Brower he had decided to take no part in the election. He subsequently received, he thinks from Brower, $10 with a lot of Democratic tickets with the sitting member's name on them. He kept part of the money; he bought crackers and beer with part and paid $5 to Peter Virnig. The witness pretends that he voted for Donnelly, but the tone of his testimony renders this doubtful.

Brower then went to see Peter Virnig, (p. 299), another farmer of Rich Prairie, a Democrat. John Fleckenstein was with him. Fleckenstein paid him, Virnig, $5., "for his team and his day's work" at the election. With the $5 was a lot of Democratic tickets with Washburn's name on them. Virnig also pretends that he voted the straight Democratic ticket.

Brower also called to see Henry Armstrong, (p. 303), of Two Rivers, Morrison County, a farmer and a Democrat. He testifies that Brower paid him $20 to work at the polls for Washburn. He did work for Washburn, distributed his tickets, and the presumption of law is that he voted for him.

Thomas Kitowski was subpœnaed to testify, but refused to appear. Charles Berens testifies, however, (p. 300), that Kitowski told him that Brower had paid him $50. Brower admitted he had paid him some money, it may have been $25 or $30.

These briberies, having been committed by an authorized agent of the sitting member, were, in effect, committed by the sitting member himself; and the agent, Brower, says that he will not swear that he did not bribe one hundred persons in the same way during his canvass of Todd and Morrison Counties, and spend $500 in doing so.

Milo Porter, (p. 292), mail-carrier, of Little Falls, Todd County, was a supporter of Donnelly. The Republican county treasurer of Todd County, Mr. Buss, offered him $50 if he would abandon Donnelly and support Washburn. He, (Buss), said he had himself received, or was to receive, $500. Porter declined to take the $50, and published a card at once, before the election, in the Little Falls Transcript, reciting the offer made him, and warning the people of the kind of means that were being employed to elect Washburn. There was no attempt made to contradict Porter's testimony. Buss was not called to the witness stand.

We pass from the northern part of the district to the southern part.

William M. Leyde, (p. 48,) lives at Cottage Grove, Washington County, engaged in threshing-machine business—a Republican. He saw Mr.

Washburn in Saint Paul shortly before the election. He went to Minneapolis, to the room of the Republican Central Committee, or a room adjoining. He was there furnished with a letter, (he does not remember whose name was to the letter,) to a Mr. Sabin, of Stillwater, requesting Sabin to employ him to canvass the county, (p. 49). He, Leyde, understood that $600 was raised in Stillwater for political purposes. Armed with this letter, he went to Stillwater, and was paid $50 by Sabin, and $15 by another party, to canvass the county, and thereupon he visited nearly all the towns in the county, and hired men to work at the polls for Washburn with their teams. He declines to say who he hired, how many he hired, or how much he paid them.

We supplement Leyde's testimony by the testimony of F. S. Meilicke, (p. 52), one of the county commissioners of Washington County, to whom Leyde stated that he (Leyde) had talked with Washburn, and Washburn told him "to go to Sabin, and that the money had been placed in Sabin's hands and he would make it all right with him"; and that they had raised $600 in Stillwater, "besides the amount *that Mr. Washburn had placed there.*" He (Leyde) said that he had spent all the money so furnished him but $15, in hiring men to work at the polls for Washburn; he gave the name of one man, Henry Monroe, of Newport, to whom he had paid $5 "to work at the polls for Washburn.' All the $600 raised at Stillwater, and the money contributed by Washburn, was to be spent in behalf of Washburn.

We turn now to some briberies committed in Saint Paul; and here, again, the money paid is traced back to Minneapolis, and to the sitting member.

John Flaherty, (p. 25,) testifies: is a saloon-keeper in Saint Paul; a Democrat. He went to Minneapolis two weeks before the election; went to the Republican headquarters; saw C. W. Johnson, secretary of the Republican Central Congressional Committee, and the same party who acted as agent for Washburn in the bribing of Cloutier. Johnson said that Washburn must be elected, and asked witness if he thought he could get many votes in Saint Paul, and witness said he thought he could. Johnson told him that one R. Barden "was their agent at Saint Paul," and promised to write Barden about Flaherty. The day before election, witness called on Barden and Barden paid him $10. Witness pretends that he voted for Donnelly, but admits that he worked at the polls part of the time for Washburn.

Abraham Werrick, (p. 28,) of Saint Paul, machinist, testifies that he also went to Minneapolis in October, before the election. He made it his special business to see Washburn, and saw and conversed with him; he asked Washburn "who was his friend down there," (in Saint Paul). Washburn told him "he expected the committees would take some interest in him"; "that Mr. Barden," (the same party mentioned by Flaherty,) "was on some committee," and he gave him a letter of introduction to Mr. Barden; the letter stated that Werrick was his, Washburn's, friend. Witness presented Washburn's letter to Barden; forgets what conversation took place; but the committee, (presumably the committee of which Barden was a member,) asked him to hire two men to work at the polls. He received $30—$10 for himself and $20 to hire two men. He hired Oluf Larson and Julius Bjornstad, and paid them $10 each. He worked for the whole Republican ticket. Prior to seeing Washburn and being paid this $30, he had not been supporting Washburn, (p. 31); the men Larson and Bjornstad were paid to work for the whole Republican ticket. Larson, (p. 27), is called and admits the receipt of $10 from Werrick, to work *for the* straight Republican ticket; he did so work

and voted for Washburn. Bjornstad, (p. 21), testifies to same effect; he worked for the whole Republican ticket; received $10 from Werrick; he claims to have voted for Donnelly.

O. B. Wergedahl, (p. 20), of Saint Paul, testifies that Werrick told him he wanted him to work for the Republican ticket; and said that he, Werrick, saw Washburn twice in Minneapolis, and that Washburn sent him, Werrick, to Barden, and told him that he, Washburn, "*had given money to Barden to spend in Saint Paul for his election.*" He wanted Wergedahl to work for Washburn, and told him he had got money for Bjornstad; witness refused to work and vote for Washburn.

This testimony seems conclusive. Washburn had placed corruption funds in the hands of R. Barden, and he and Johnson, secretary of his committee, refer parties to Barden for money; and Barden, or some member of the committee, pays out money to these parties; they pay in turn to others, and all of them work at the polls for Washburn's election.

Another Saint Paul party, John Guiry, (p. 22), admits the receipt of $25 from a Republican candidate for a local office, (State senate,) to work at the polls and peddle Republican tickets. He pretends to have voted for Donnelly.

Christian Heyer, a Democratic German farmer, of Afton, Washington County, testifies, (p. 54, printed testimony,) that he was paid ten dollars by Warren Getchel, a Republican politician, and particular friend of the sitting member. Getchel asked him if he could support Washburn. Witness said he would. Getchel said he was "a particular friend of Washburn," and "he wanted me to help all I could; he asked me if there were any debts on our German church, and that after election he would hand me ten dollars to use for what purpose we thought best—I could do with it as I had a mind." He does not know what the consideration was for the ten dollars. They have a large German population at Afton, about half Democrats. He worked and voted for Washburn.

Tolef G. Fladeland, of Sauk Center, Stearns County, merchant, testifies, (p. 221, printed testimony,) that he was paid twenty dollars by Mr. Cooper, chairman of the Republican county committee of Stearns County, to go out and peddle Democratic and Republican tickets with Washburn's name on them. He told Cooper that he was not a politician; doesn't know but he expressed himself in favor of Mr. Donnelly during the campaign. At the time Cooper paid him the twenty dollars he was neutral as between Donnelly and Washburn. He visited two or three towns; used his own team; was gone one day; expenses one dollar; profits, nineteen dollars.

The testimony of Nathan Richardson, of Little Falls, Morrison County, (p. 285), leading Republican and politician by trade, shows that the editor of the Democratic paper at that place was bought up to support Washburn; that the sum paid was probably $125, (p. 286); that it came from Minneapolis, from Loren Fletcher, an active friend of the sitting member and a prominent Republican, (p. 44); and that after the payment of that sum the said newspaper supported Washburn and denounced Donnelly. The witness Richardson, who conducted the sale of this Democrat and his newspaper, supported Washburn, made a canvass of the county in his behalf, spent $25. He admits the payment of $7 to William Witherall; he did not expect to be repaid; thinks Witherall voted for Washburn; he also paid $2 or $3 to a man named Sloan; money has not been repaid; thinks Sloan voted for Washburn.

It will be observed that in nearly every one of these cases of bribery committed throughout a region of country half as large as the State of

New York, the money paid is traced back to the city of Minneapolis, the residence of the sitting member. From this point as a common center, the corruption radiated in all directions over the district; and when we come to Minneapolis all the testimony shows that it was a very hotbed of bribery. We give brief abstracts of the cases proven:

It is shown, (p. 80,) that a Democrat named A. M. Schaak, a Scandinavian, was publishing a Scandinavian newspaper in Minneapolis during the campaign and supported Donnelly for Congress up to the night before the election; that night he was announced to speak at a Scandinavian Democratic meeting at Minneapolis in favor of contestant, Donnelly. Instead of speaking for Donnelly, he came out strongly for Washburn, and the next day he admitted to witness that he had been paid $150 for doing so. He had a new suit of clothes and a pocket full of money. There was no attempt to contradict this witness; in fact, counsel for the contestee, in their cross-examination, seem to argue that it was perfectly right and legal to bribe Democrats to speak in favor of Republican candidates. It may be said that this testimony as to Schaak is hearsay evidence. The declaration of a voter as to his qualification or disqualification to vote is always received in evidence; he is regarded as a party to the proceedings. This is a well-settled and uniform practice, (see 27, N. Y. Rep., People vs. Pease; 3 McCord's Rep., p. 230, foot-note; contested election case, Vallandigham and Campbell, Cong. Globe, vol. 41, p. 2317; and in the case of Milborne Port, 1, Douglas Election Cases, 67, 76, 129, 150, &c., (see 3, McCord, 230), it was decided that the admissions of a voter that he was bribed are always receivable in evidence. They rest also on the broader ground that confessions of crime are receivable against the party "as the highest and most satisfactory proof;" (Russell on Crimes, vol. 2, p. 823). Here the admissions are confirmed by all the surrounding circumstances; the sudden conversion on the eve of the election, the new clothes, money, &c.

William R. Metcalf (p. 182), a farmer residing in Crystal Lake Township, near Minneapolis, testifies that he was paid $15 to work at the polls in Crystal Lake Township for the Republican ticket. Corser, one of the parties who hired him to work at the polls, was a Republican candidate for State senator, asked him to support Washburn; he refused; subsequently he was engaged to work at the polls for the Republicans. The $15 was paid him by Charles W. Johnson, secretary of Washburn's committee, the same party who bribed Shagren, Flaherty, &c. He went to Johnson's office two days after the election; he simply presented his name and Johnson paid him the $15 without a word. He declines to say who he voted for for Congress; will not swear that he did not vote for Washburn.

It will be remembered that when Major Hale attempted to bribe Shagren, he told Shagren to come the day after election to Washburn's office, and he would be paid. We find, from Metcalf's testimony, that Johnson also had an arrangement to pay off his bribed voters the day after election; and in this connection we would refer to the testimony of Ed. A. Stevens, (p. 105), whose office was in the same building with Johnson's office, who swears that as he passed Johnson's office, several men were standing in front of it, and a party said to Stevens, "You ought to hear Charley Johnson swear; there is a big crowd below after their pay, and Charley says, 'Major Hale can pay his own hounds. I have all I can do to pay those I hired myself.'" The testimony of Metcalf and Shagren shows what they were being paid for.

This same man, *Johnson*, issued, September 19, 1878, as secretary of

the Republican Congressional committee, an appeal (see p. 43), in the form of a circular, to Republicans to contribute funds to the success of the Republican cause in the district. The circular is in these words:

"MINNEAPOLIS, *Sept.* 19.

"SIR: The Congressional committee, charged with laboring for the success of the Republican cause in this district, call with confidence upon you, as a Republican, for such a contribution in money as you may feel willing to make, hoping it will not be less than $——.

"The committee deem it proper in thus speaking to Republicans, to remind them of the importance of the impending campaign. That the United States Senate is to be Democratic after the 4th of March, 1879, is very nearly certain. In view of this, the election of a Democratic House of Representatives would precipitate upon the country dangerous burdens. Among these schemes is the intention to attempt the revolutionary expulsion of the President from his office, the payment of the rebel claims and war debt, the payment of the full value of all emancipated slaves, and the unlimited issue of irredeemable paper currency, in place of the present redeemable paper money, which was issued by authority of a Republican Congress, and by the same party has been sustained, thereby preserving the national honor and credit.

"Please remit at once," &c.

Johnson admits, (p. 42), that copies of this circular were sent out to about fifty persons, and that money was received in reply, but he refuses to state who it was sent to, and he does not remember what amount was received in response to this appeal.

This circular proves three things:

1st. That the Republican committee was collecting money for political purposes. And while there is no testimony to show that the particular money received in response to this circular was used for corrupt purposes, there is evidence which abundantly establishes the fact that money, derived from some source, was employed in buying voters.

2nd. That Mr. Washburn's committee regarded and treated Mr. Donnelly as a Democratic candidate, and entitled as such to the Democratic vote of the district.

3rd. That they were willing not only to admit Mr. Donnelly's democracy, but to charge him with being so extreme a Democrat that he would join in the most revolutionary designs of his party; and they make their appeal to the lowest passions and prejudices of human nature, by charging upon the Democratic party of the nation proposterous designs which it had never contemplated or advocated.

Louis Knudson, of Minneapolis, testifies, (p. 161, printed testimony), that he was paid five dollars by his employers, Barnard & Cope, active Republicans, to work for Washburn. He worked and voted for him. His fellow-workman Louis Paulson did the same kind of work, and also received five dollars; he, Paulson, saw it paid.

John C. Oleson, testifies, (p. 92), that Wm. Chase asked him to vote for Washburn. He paid him $2 to work at the polls for Washburn, and he did so work and vote. This Wm. Chase was the same party who induced Shagren to go to Washburn's office in search of "a job."

Emil Shagren testifies, (p. 16), that Ole Mahla admitted to him that he got $25 to vote for Washburn. Mahla denies this in part, (p. 117), but admits that he did receive $25 from some one for working at the polls. He declines to say whether he peddled tickets with Washburn's *name* on them. He refuses to say who paid him the money. He pretends that he voted for Donnelly.

agren also testifies, (p. 16). that Sevit Mahla told him that he had paid to vote for Washburn, but did not state the amount. Also Daniel Getchell told him that he had received $20 for voting for hburn. Getchell denies this, (p. 86), out he refuses to say what he ay to Shagren. He admits that he received money for his services e election, but claims that it was not from Mr. Washburn, and that oted for Donnelly. He refuses to tell who paid him.

ominick M. Guertin (p. 94) testifies that Karl Fintler told him that ad received a sack of Washburn flour for voting for Washburn.

uis N. Gaynor, of Minneapolis, (p. 206), admits that he received ey for his services on election day, but declines to say who paid it m; and he declines to answer whether he voted for Mr. Washburn orked for him; but he admits he peddled tickets with his name on .

ter Engberg, of Minneapolis, (p. 207), admits that he received ey for election purposes; that he voted for Washburn; that he ed for him, and that he was paid for his services on election day.

hn Smith, of Minneapolis, (p. 131), swears that Peter Quady, a n-keeper, told him he had received $35 for voting his boarders for Washburn.

ter Quady, (p. 201), admits that he told Smith that he received nd was to receive $20 more; that he induced Smith to vote and him a Washburn ticket; several of his boarders voted for Wash- ; but he pretends the money was not paid in the interest of Wash- ; he voted for Washburn.

infield S. Leach, (p. 158), testifies, that Quady offered him $10 if he d vote for Washburn. Leach refused the offer.

n. Charles Hoag, a leading Democrat of Hennepin County, (see p. was requested by a democratic worker for Washburn to state what of money, put into his hands, would induce him to vote for Wash- . Hoag refused the bribe and voted for Donnelly.

omas G. Rees, of Minneapolis, (p. 146), testifies that Frederick er told him that he was hired to canvass, "travel, and treat," for hburn, and was paid $35 per week and $10 a day for money spent eating; and that there was a man similarly employed in each of the h precincts of the city of Minneapolis.

omas Halloran, hotel-keeper, Minneapolis, testifies, (p. 119), that s a Democrat; that he was paid $5 by a Dr. Evans, with which treat the boys," and he agreed to work and vote for a Republican idate named by Dr. Evans; it was not Mr. Washburn; and he s that he, Halloran, voted for Donnelly.

e following is a summary of the cases of bribery or attempted ery referred to in the foregoing testimony:

s where the money was paid by the sitting member, or his business man- er or the clerk of his Congressional committee, or some friend; and the rties voted for the sitting member:

he wood-camp at Tamarack River, 90 wood-choppers and 2 ippers, total	92
ster and White, the contractors	2
ard Cloutier	1
road hands at work at round house, Crookston, Polk County	35
road hands who came to Crookston on hand-cars	16
road hands who voted at Crookston with Johnson	17
road hands who voted at Two Rivers	74

Balance of D. M. Robbins's railroad hands who vote at Tamarack River	15
J. V. Brower and the men he bribed, to wit, George Geissel, Thomas Kittowski, and Henry Armstrong	4
Wm. M. Leyde	1
Henry Monroe	1
Abraham Werrick	1
Oluf Larson	1
Christian Heyer	1
Toleff G. Fladeland	1
William Witherall	1
—— Sloan	1
A. M. Schaack	1
Wm. R. Metcalf	1
Louis Kundson	1
Louis Paulson	1
John C. Oleson	1
Ole Mahler	1
Sevit Mahler	1
Karl Fintler	1
Louis N. Gaynor	1
Peter Engberg	1
Peter Quady	1
Fred. Puhler, and the 14 canvassers similarly engaged in the other 14 precincts of Minneapolis	15
Mr. Buss, treasurer of Todd County	1

Cases where bribes were offered but not accepted; or where, if accepted, the party bribed claims that he voted for Donnelly.

Emil Shagren	1
John Fleckenstein	1
Peter Virnig	1
Charles Berens	1
Milo Porter	1
John Flaherty	1
O. B. Wergedahl	1
John Guiry	1
Julius Bjornstad	1
Daniel Getchell	1
Winfield S. Leach	1
Charles Hoag	1
Thomas Halloran	1
	13
Total	304

But this is not all. The testimony reveals the names of only six of the parties who were bribed by J. V. Brower, of Saint Cloud, in his canvass of Todd and Morrison Counties, and to these six men he paid out only $100, but he testifies that he may have similarly employed a hundred parties, and he does not know whether he paid out $50 or $500. In the case of William M. Leyde, another of the agents sent out by Washburn, we have the name of only one of the men he hired to work

at the polls, Henry Monroe, while it is in evidence that he canvassed nearly every town in the county and hired a number of men whose names he refused to disclose. We find that at Crookston there were 173 illegal votes, and the testimony shows that 68 of these were railroad hands who were all paid for their votes. The probability is very great that the larger part of the other 105 votes were cast by railroad hands similarly paid for their votes.

In Minneapolis the whole atmosphere was clouded with bribery. The evidence shows that large sums of money, many thousands of dollars, had been spent for corrupt purposes. A startling revolution in the political feelings of the voters was accomplished on the eve of the election and all the testimony indicates that this was brought about by bribery and intimidation. There was no attempt on the part of the sitting member to account for this extraordinary revolution, or to answer the testimony showing bribery.

It must not be forgotten that bribery is a secret crime; both the parties to it are equally interested in keeping it secret; and when detected both are ready to give ingenious explanations of it. If they have acknowledged to third parties the receipt of the bribe, they are ready to declare, when called to the witness stand, that they were in favor of the bribe-giver before the money was offered; or that they voted for his opponent; or that the money was paid by some one else, some nameless party, for some other purpose.

Under these circumstances when it is shown that in an election over 300 cases of bribery and attempted bribery are proven, the presumption is not violent that for every case that was, by accident, or the indiscretion of the parties, brought to the light, there were others that were never revealed.

The records of the contested-election cases of Congress will be searched in vain for a parallel to this case. It shows that the people of this Congressional district were debauched to the last degree; the witnesses in many cases, defend the practice of buying up voters to forego their principles; the parties who received the bribes in many instances boasted to their neighbors of the money they had received, and seemed to be proud of the high price for which they had sold themselves; and the sitting member did not think it at all necessary to call witnesses to deny or explain away this overwhelming mass of corruption. Nothing could testify more strongly to the degeneracy of the age and the depths to which popular suffrage has fallen than the revelations made in this extraordinary case.

It is a clearly established principle of law, both in England and the United States, that bribery committed by the sitting member, or "by any agent of the sitting member, with or without the knowledge or direction of his principal, renders the election void." (See Felton *vs.* Easthorpe, Rogers' Law and Practice of Elections, 221.)

In England bribery is an offense of so heinous a character, and so utterly subversive of the freedom of elections, that, when proved to have been committed, though in one instance only, and though a majority of unbribed voters remain, the election will be absolutely void. (Cushing's Par. Law, p. 70, sec. 189; *St. Ives*, Douglass, 11, 389; *Corentry*, Peckwell, 1, 97; Maine on Elections, 345.)

Freedom of election is violated by external violence, by which the electors are constrained, *or by bribery* by which their will is corrupted; and, in all cases, where the electors are prevented in either of these ways from the free exercise of their rights, *the election will be void without reference to the number of votes affected thereby.* (Cushing's Par. Law, p. 68, § 181.)

The same doctrine was affirmed by the House of Representatives in

the recent case of Platt *vs.* Goode, second Congressional district, Virginia. (See Contested Elect., 1871–'76, page 650).

The report, adopted by the House, declares:

> These bribed votes should not be counted. The record furnishes no method for their elimination. Their acceptance can only be avoided by applying the rule of law, so well known and of such general adoption that it need scarcely be repeated here, that when illegal and fraudulent votes have been proven, and the poll cannot be purged with reasonable certainty, the whole vote must be rejected.

But your committee do not think it necessary to rest the decision of this case upon this principle of law, although they believe that the evidence shows conclusively not only that bribery was committed in a multitude of instances, but that a great number of these cases were traced home to the sitting member. They are of the opinion that the evidence shows that the contestant had a majority of the legal votes cast and returned.

INTIMIDATION.

It appears that many of the voters who cast their votes in favor of the sitting member were intimidated and coerced into doing so. The testimony of Albert Church, (pp. 224, 227,) shows that the railroad hands who voted for Washburn, at Crookston, told him that they were compelled "to vote the way their boss, the railroad company, told them to"; * * * "they had to vote the ticket of their own boss." They were led up in a body to the polls, (p. 226) by their foreman, Jacobus, and he gave them the tickets they were to vote. Many of these men were Democrats, (p. 224), and would probably have voted the Democratic ticket if they had been free from the coercion of the railroad company.

In Minneapolis this system of coercion and intimidation was carried out systematically. The testimony shows that the employers of labor in that city united to raise money to buy votes for Washburn, (p. 23); a circular was issued by the chairman of the Republican county committee, urging business men to lay aside their business and devote one day at the polls, (p. 106); large numbers of employers of labor, including many who usually took no part in such work, were at the polls working for Washburn, (p. 106); the workmen were sent for and brought to the polls by their employers and ballots were there placed in their hands, folded, and voted by the employés without being opened, (p. 108,) the employer or his foreman following them to the polls to see that they deposited them, (p. 97); many of the employés declared that they believed they would lose their means of subsistence if they did not vote for Washburn, (p. 110); the employés of the North Star Woolen Mill were brought to the polls in squads by the son of the proprietor, Philip Gibson; when a friend of contestant tried to give these men ballots, Gibson jumped between them and tried to force the canvasser away, declaring that he had brought the men there himself, and that most of the workmen voted as their employers wanted them to, (p. 96). The foreman of this mill told one of the workmen, (p. 97), that an employé of the mill had, at a previous election, voted in opposition to his wishes, and that he would take the same man to the polls the next day, to wit, to the Congressional election in question, and if he did not vote as he wanted him to he would discharge him. When witnesses were called by contestant from among the employés of this mill to testify in this case, the said foreman followed them to the notary's office and remained there while they were testifying, (p. 98). "The workmen in the Minneapolis Harvester Works who were known to be Washburn men were carried to the polls and returned; while those who could not be induced to vote for Washburn were not allowed to go, unless by losing their day's

work, and probably their situations" (p. 98). In one case a witness, a workman in a furniture shop, swears that he was suspended from work the day after election because he had voted for Donnelly, and because it was reported to his employer that he had expressed the belief that if Donnelly was elected the workmen would get better wages; ten days after election he was finally discharged, (see pp. 101–2). It appears that "the vote of the city was very light. * * A large number of workmen did not vote at all. They were afraid of losing their jobs if they voted for Donnelly, and they would not vote for Washburn, (p. 113)."

In seven precincts of Minneapolis the judges of election placed a number on the back of each ballot to correspond with the number of the voter on the poll-list. Let us consider the purpose of this numbering of the ballots.

At the session of the legislature of Minnesota in January and February, 1878, a special law had been enacted, providing that in cities containing more than 12,000 inhabitants the ballots should be numbered. This law applied, and was intended to apply, only to the cities of Saint Paul and Minneapolis, where the workingmen were very numerous, and where alone the required population existed. It was felt by many that this provision of law was oppressive and unconstitutional, and at the spring election in Saint Paul, held immediately after the law was passed, a party offered to vote without having his ballot numbered; he was refused, and he brought an action at once in the district court of Ramsey County, in which Saint Paul is situated, to test the validity of the act. The court decided, (see Brisbin *vs.* Cleary et al., printed test., p. 74), that the act was unconstitutional, inasmuch as the constitution of Minnesota, sec. 6, Art. VII provides that "all elections shall be by ballot"; that the ballot implies secrecy, and that this law requires every man "to vote, in effect, a ticket with his name indorsed on it"; and in case of a contest the ballots are to be made public. "This law," says the court, "furnishes the means of ascertaining exactly how every elector voted; *that is its acknowledged purpose.*"

This decision of the district court of Ramsey County was the unanimous decision of a full bench of three judges; it was appealed to the supreme court, and was affirmed by the supreme court, subsequently to the election. [See Northwestern Reporter, vol. 1, p. 75, (foot page 825,] Brisbin *vs.* Cleary et al., being an appeal from the district court of Ramsey County, in the same case referred to above.] The supreme court sustain the decision of the district court of Ramsey County, and say:

"The statutory provision with regard to the numbering of tickets, above quoted, clearly interferes with and violates the voter's constitutional privilege of secresy. It is therefore an unconstitutional provision The voter cannot be required to submit to its application the ticket offered by him. * * * The defendant's demurrer was properly overruled, and the order overruling the same is accordingly affirmed."

This decision was made subsequently to the election in controversy, but is it not retroactive in its effect upon this case?

It declares that the word "ballot" means secrecy and absence of every external mark whereby the elector who has cast the same can be identified. A ticket identified by placing the voter's name, or a number indicative of his name upon it, is not a "ballot" in the sense of the constitution; and has, therefore, no right to be placed in the *ballot*-box. When the court decided that such identified tickets were not "ballots" it certainly follows that they are not entitled to be counted as "ballots."

Briefly stated the argument may be thus summed up:

1. Members of Congress can only be elected in the State of Minnesota by "ballots."
2. A numbered ticket is not a "ballot."
3. Such numbered tickets, therefore, cannot be counted.

They are simply attempts to vote, but are by election officers deprived of that constitutional element of secrecy which is necessary to enable them to be counted as "ballots."

But it is not necessary to rest the decision of this case alone upon this ground; the conclusion we have reached is based on broader foundations, which reach the *bona fides* of the election in the precincts where those ballots were numbered. Not only were the numbered votes cast in those precincts unconstitutional and void, but they were so numbered for a corrupt and dishonest purpose, and were incompatible with an honest, fair, and free election.

All lawyers will concur that the decision of the district court was highly persuasive of, if not sufficient to control, the judgment of election officers in their action touching the validity of the satute in question. And we accordingly find, (see Daily Globe Nov. 5, 1878, report of proceedings, offered in evidence) that in the city of Saint Paul the judges of election met the day before election, took counsel with the law officer of the city, and decided not to number the ballots. They took this course under the advice of the attorney-general of the State, (as appears by said paper,) of the county attorney of Ramsey County, of the city attorney of St. Paul, and even of the counsel who had defended the law before the district court. These parties, the attorneys for the city and county, and the attorney defending the act, united in a card to the public, advising election officers not to number the ballots. (See St. Paul Pioneer Press Oct. 27, 1879.]

A similar meeting of the judges of election was held the day before the election in the city of Minneapolis, (see p. 134). They called upon the city attorney for his opinion on the question of numbering the ballots. He told them that the district court of Ramsey County had decided that the law was unconstitutional; and that it was his opinion, also, that such numbering destroyed the secrecy of the ballot and was unconstitutional. "They finally took a vote as to how they would conduct the election in that particular," and "decided in favor of disregarding the law," and that they would not number the ballots. The vote stood thirteen or fifteen against eight or ten, (p. 143).

It was thus resolved in both the cities to which alone the law applied that the ballots should not be numbered. This was considered a triumph for the supporters of Mr. Donnelly, and accordingly the Saint Paul Daily Globe, the Democratic paper of that city, which was supporting Mr. Donnelly, announced this action in its issue of the next morning, which was the morning of election, in these words:

[From the Saint Paul Daily Globe, Nov. 5, 1878, Exhibit B, E. A. H., on file in office of clerk of Committee of Elections.]

"MINNEAPOLIS NEWS.

"NO NUMBERING.

"DEMOCRATS, WORKINGMEN AND NATIONALS.

"THERE IS NO FEAR OF LOSING YOUR SITUATIONS. GIVE WASHBURN A BLACK EYE. YOUR EMPLOYERS CANNOT FIND OUT HOW YOU VOTE.

"The judges of election met at the council chamber at 3 o'clock yester-

day afternoon to consult as to whether it would be legal, after the recent decision of the Ramsey County Court, to number the ballots. After consulting the best legal talent of the city it was determined to receive the votes as of old, and deposit without placing the numbers opposite the different names.

This makes the thing all secure! Now, boys, go to the polls and vote as you please!

The bull-dozers can't rob you of your places.

Vote for Donnelly, and down with all rings."

In Saint Paul the same paper announces the resolution of the judges not to number the ballots under a head-line, "NO NUMBERS—A FREE, UNTRAMMELED BALLOT!"

This, it will be remembered, was contemporaneous history; it shows that it was understood at that time, before any contest could have been contemplated by contestant, that the numbering of the ballots would result in the intimidation of the workingmen, who were in favor of Donnelly; and that if the ballots were not numbered Donnelly would secure a larger vote among the workingmen.

This newspaper, it is shown, reached Minneapolis before seven o'clock on the morning of the election, and it had a large circulation in that city, (See p. 46, ques. 9, 10, 11, 12.) It, doubtless, aroused the friends of the sitting member to action; for we find that by nine o'clock, the hour at which the polls opened, a decision had been reached to number the ballots in seven out of fifteen election precincts of Minneapolis. It is charged by contestant in his brief that these precincts were largely inhabited by workingmen; and this statement was not denied by the counsel for the contestee in his brief. It appears, (p. 181), that in one precinct, (2d, of the 4th ward), all the voters were workingmen; and the returns of the votes of previous elections show that a large Democratic vote was cast in these precincts.

If the numbering of the ballots had been the result of an innocent mistake on the part of the judges of these seven precincts; if they had been ignorant of the decision of the district court of Ramsey County, declaring such numbering unconsitutional; if there was no evidence to show fraud or intimidation, we should not be in favor of casting out the votes of these precincts simply for the reason that the ballots had been numbered. This was the view taken by the election committee in the case of McKinsie *vs.* Braxton, (7 dist. Virginia, Contested Elections, 1871–'6, p. 20). The committee, (McCrary, chairman,) says: "Although it would be possible, from the numbering of the ballots, to ascertain how each person voted, it is not claimed in this case that this was done, or that the tickets were voted for any such purpose, or for any improper or unlawful purpose whatever."

The question of *intent*, therefore, is the true question at issue, and all the circumstances, in the case under consideration, point to a corrupt intent:

1. A cloud of bribery surrounds the vote of the whole city, which the contestee has made no effort to dissipate.

2. There is evidence showing a widespread conspiracy among the employers of labor to corrupt, and, where they could not corrupt, to intimidate their workmen.

3. The testimony shows that the workmen were intimidated, and that they believed that they would lose their means of subsistence if they voted against Washburn.

4. The judges of election knew that the numbering of the ballots had been declared unconstitutional by a court of record second only to the

supreme court in dignity: by the attorney-ge eral of the State; by the city attorney of St. Paul; and by the county attorney o Ramsey County, and that even the attorney who had defended the consti utionality of the law in the district court, had advised judges of election not to number the ballots.

5. They had been told by their own law officer, whose opinion they had requested, that it would be unconstitutional to number the ballots, inasmuch as it violated the secrecy of the ballot.

6. They knew that the supporters of Mr. Donnelly believed that the numbering of the ballots would prevent a free and fair election, and would result in the intimidation of the workmen.

7. They had deliberately voted by a large majority *not* to number the ballots.

There can be but one explanation of the *intent* with which they reversed this deliberate action. It was done to prevent a fair election, and to give the employers of workingmen an opportunity to still further intimidate them by preserving a record of how the men voted whose means of life depended upon the good will of those who employed them; the working men well knew that the ballot-boxes could be opened at any time in any real or pretended contest and the character of their votes revealed.

Only bold and reckless men would have dared to set their private judgment, as laymen, against the judgment of the district court of Ramsey County, against the judgment of the attorney-general, and of the law officer of their own city, upon a question of law; and against the opinions of two-thirds of the judges of election as expressed at the meeting of judges the day before. In doing so they ran counter to and defied the settled opinion upon the question. These seven precincts were the only precincts in the two cities Saint Paul and Minneapolis—where there were over thirty precincts—in which the ballots were numbered in the year 1878.

It must be remembered that the testimony shows that among the twenty-one judges of election of these seven precincts, who thus reversed the action of all the judges of the city of the day before, there was but one judge who was a friend of Mr. Donnelly, (see p. 195–197); and even he did not swear that he was a supporter of Mr. Donnelly, but only that he was "understood" to be such, (see p. 136). By law Mr. Donnelly, as the candidate of two political parties, should have had fourteen supporters among these twenty-one judges; in effect, he had not one. [See sec. 1 act of March 12, 1878.] This extraordinary action was therefore taken by twenty-one judges who were the political partisans of Mr. Washburn; and no explanation is offered by Mr. Washburn or themselves for their course.

The very fact that in these seven precincts Mr. Donnelly had been deprived by the city council of Minneapolis of all representation among the officers conducting the election is, in itself, a very strong proof of conspiracy and fraud.

It appears by the testimony of one witness, a Democrat, (p. 137), that he offered his ballot at one of these precincts and requested that it be placed in the ballot-box without being numbered; this was refused; the judges refused to permit him to vote unless he voted a numbered ballot; this he declined to do, and he did not vote. It appears that large numbers of workmen did not vote for fear of losing their places (p. 113). It is an established principle of law that where voters are kept from voting by an illegal requirement of the election officers, it voids the election at such polls. (See McCrary's Amer. Law Elections, sec. 89.—Scranton

Borough Election, Brightly's Election Cases, p. 455.) It is evident that large numbers of Democrats, from some cause, did not vote at all at said election in that city.

Two years previously, at the Presidential election of 1876, the vote of Minneapolis stood as follows, (see Saint Paul Pioneer-Press, November 9, 1876, in Congressional Library):

Hayes	4,098
Tilden	3,743
Total	7,841

It is a matter of history that Minneapolis increased during the two years between November, 1876, and November, 1878, at the rate of 11 per cent. per annum (see Minnesota State Register, 1879, Congressional Library, p. 316). If we apply this percentage of growth to the vote of 1876, and suppose that the two political parties increased pro rata, then the vote should have stood in 1878 as follows:

Total Democratic vote	4,568
Total Republican vote	4,999

But instead of Mr. Donnelly receiving, in 1878, 4,568 votes in Minneapolis, he received but 1,566 votes; a falling off of 3,002 votes. And it appears that but a small part of this Democratic vote went to Mr. Washburn; for, if he received the full vote of his party, he should have had 4,999 votes, while he claims to have recived 5,026 votes; a gain of only 27 votes.

It thus appears that there were nearly 3,000 Democratic voters who did not vote at all at the election of November 5, 1878.

The result was that, instead of the Republican majority given to President Hayes in Minneapolis of 355 votes, Washburn claims to have carried the city by 3,680 votes.

The evidence shows that Mr. Donnelly was the Democratic candidate for Congress, and that he received the support but not the votes of very nearly all the Democrats, even in Minneapolis, (see p. 109, 110); the immense falling off of two-thirds of the Democratic vote in Minneapolis can, therefore, only be accounted for by the intimidation of the workmen, and the numbering of the ballots in nearly half the precincts of the city was part of this system of intimidation.

The evidence shows that the workingmen of the city regarded Mr. Donnelly as their friend and champion, (p. 112). They had a Labor Union, a political society, numbering about 2,200 members, (p. 111), and which represented the sentiments and feelings of the working population of the city, numbering between 4,000 and 5,000 (p. 112); Mr. Washburn "had no friends in the Labor Union", (p. 111); and the Union nominated Mr. Donnelly for Congress, at a large meeting, by a unanimous vote. The workingmen continued to support Mr. Donnelly until the day before the election, (pp. 141, 142). The evidence shows that a great revolution was wrought in the action of the Democrats on the eve of the election; a revolution which several witnesses state could only be explained by the use of money and intimidation, (pp. 98, 106, 141, 142, 277, &c.). Instead of receiving the 4,000 or 5,000 votes of the workingmen, or the 4,568 votes of the Democrats, to say nothing of the Greenback vote, Mr. Donnelly received but 1,566 votes in the entire city.

In the seven precincts where the ballots were numbered the vote stood as follows:

Ward.	Precinct.	Washburn.	Donnelly.	Maj. for Washburn.
2d.	1st.	187	42	145
"	2d.	265	42	223
4th.	1st.	334	127	207
"	2d.	347	57	290
"	3d.	566	83	483
6th.	1st.	364	95	269
"	3d.	219	76	143
			Total majority for Washburn in these precincts.....	1,760

If we compare this vote with the vote cast in these same precincts seven months previously, to wit, at the municipal election of April 2d, 1878, we find that the Republicans carried these seven precincts at that spring election by a total majority of 171, or 1,689 votes less than the majority claimed for Washburn.

At the same election, in the spring of 1878, the Republicans had but 164 majority in the city of Minneapolis; and yet they claim to have carried the city, seven months thereafter, by 3,680 votes!

In these seven precincts the vote at the spring election of 1878 was as follows:

Republican.....	1,215
Democratic.....	1,044
Total.....	2,259

At the Congressional election, November 5, 1878, the vote in these seven precincts was as follows:

Washburn.....	2,282
Donnelly.....	522
	2,804

Thus while the vote in the fall was but 545 more than it was in the spring, the Republican majority was ten times as great:

Republican majority spring of 1878.....	171
Republican majority fall of 1878.....	1,760

The total vote of the city in 1876 at the Presidential election was 7,841. If now we add 22 per cent. for the increase of population, the total vote in 1878 should have been..... 9,566
Instead of that it was 6,592

A falling off of..... 2,964

In round numbers the vote cast in 1878 was 52 per cent. less than the actual vote of the city. It is conceded that the canvass of 1878 was one of the most vigorous ever made in the city, (p. 106–7); but while it brought out the full Republican vote, nearly 3,000 Democrats failed to vote; or if any considerable part of them voted for Washburn, then an equal number of Republicans must have refused to vote for him. There can be no question that a large part of these men were the employés, who feared to vote for Donnelly lest they should lose their places.

It cannot be claimed that Mr. Washburn increased the Republican vote of the city from 355 to 3,680, and the Republican vote of the seven precincts from 171 to 1,760 because of his personal popularity; because it is in evidence that he was not popular, (see pp. 111, 277). A comparison of his vote in the district outside of Minneapolis, with the vote cast for Hayes in 1876, proves that he was very unpopular. The vote stands as follows:

Hayes, 1876	19,573	
Washburn, 1878	14,658	
Washburn ran behind Hayes		4,915 votes.

But, if from Washburn's vote there be deducted the railroad, bribed, and illegal vote of "Polk and Kittson county," 355 in all, he will be found to have run behind Hayes in the district, outside of Minneapolis, 5,270 votes, in a total vote of 19,573.

On the contrary, Mr. Donnelly's vote compares favorably with the total vote for Tilden and Cooper, in the district exclusive of Minneapolis, thus:

Tilden and Cooper		16,126
Donnelly's vote	15,926	
Add for votes of "Polk and Kittson county"	355	
		16,281
Donnelly runs ahead of Tilden and Cooper		155

Now we are asked to believe that while Mr. Washburn fell behind Hayes's vote outside of Minneapolis 5,270 votes, that he ran ahead of Hayes in Minneapolis 3,105 votes! And this, notwithstanding the fact that the population of Minneapolis consists largely of workingmen, who had placed Mr. Donnelly in nomination as their candidate for Congress, and among whom, it appears, Mr. Washburn "had no friends." And, notwithstanding the further fact, that Minneapolis may be regarded as debateable ground, politically. In 1876 the Democratic candidate for Congress, McNair, carried the city by about 500 majority, and the county by over 1000 majority. In April, 1876, the Democrats and Workingmen elected a Democratic mayor in Minneapolis by 356 majority, and carried the wards embracing the territory now embraced in the seven wards where the ballots were numbered by 525 majority. The vote stood therein:

Democrats,	1,372
Republicans,	847
Democratic majority	525

The testimony produces the conviction that Mr. Donnelly was sweeping the district outside of Minneapolis and carrying all before him; that he was popular in Minneapolis, especially among the workingmen, and that the workingmen constituted a majority of the total population. That in this emergency the sitting member and his friends formed a conspiracy to arrest the tide of defeat by bribery and intimidation; and that their last intrenchment was the seven precincts where, in effect, they made the workingmen vote *viva voce* for Washburn or take the chances of starvation. And it is a singular and suspicious circumstance that the vote of two of these seven precincts, two precincts where Washburn claims 706 majority, were not returned until eight days after the election, although they should have been returned on the morning after the election; and then when they were returned one of the two precincts is claimed for Washburn by 483 majority, while one of the clerks of the election therein, produced the original tally-sheet of the election, showing but 26 majority for Washburn in that precinct instead of 483. [See p. 275.] And when the counsel for Washburn, in the performance of his professional duty, subpœnaed the officers in charge of

the ballot-boxes to produce the ballots of these precincts, knowing, as a lawyer, that that was the best and therefore the proper legal evidence of the actual vote cast, and when the officers stood ready to have the votes counted, the contestee held his counsel back, and permitted the ballot-boxes to be returned unopened. Was this done because he preferred to risk the throwing out of 706 of his majority, rather than have the secrets of those ballot-boxes, where the votes had been numbered, revealed to the public eye? What powerful motive could have constrained him to such a course?

In Williams *vs.* Stein, 38 Ind. Rep., p. 90, the court hold that numbering of the votes cast violates the secresy of the ballot as much as if the law had required the voters to vote *viva voce;* and McCrary, (American Law of Elections, sec. 446,) says, "Votes must be cast in the manner provided by law. Under a statute requiring that the manner of voting shall be by ballot, votes given *viva voce* cannot be counted."

Upon an elaborate review of the authorities the conclusion is reached upon what seems to be good ground, that in this country the ballot implies absolute and inviolable secresy, and that this doctrine is founded in the highest considerations of public policy. That the term ballot implies secresy, and that this mode of voting was adopted mainly to enable each voter to keep secret his vote is clear. [McCrary on Elections, sec. 413 p. 112, and authorities there cited; Cooley, Constitutional Limitations, pp. 506–7 and 604.]

The chief reason for the general adoption of the ballot in this country is that it affords to the voter the means of preserving the secresy of his vote. And this enables him to vote independently and freely, without being subject to be overawed, intimidated, or in any manner controlled by others, or to any ill-will or persecution on account of his vote. The secret ballot is justly regarded as an important and valuable safeguard for the protection of the voter, and particularly of the humble citizen against the influence which wealth and station may be supposed to exercise. * * * All devices by which the secresy of the ballot is destroyed by means of colored paper used for ballots, or by other similar means, are exceedingly reprehensible, and whether expressly prohibited by statute or not should be discountenanced by all good citizens. [McCrary on Elections, sec. 194; People *vs.* Pease, 27 N. Y., pp. 45 and 81.]

We have therefore reached the conclusion that the votes cast in the seven precincts where the ballots were numbered should be deducted, not alone because they were so numbered, but because such numbering was corruptly done, with an intent to intimidate the workingmen residing in those precincts; and because it was part of a general conspiracy of the friends and supporters of Mr. Washburn to prevent a free and untrammeled expression of the preferences of the voters.

SUPPLEMENTAL RETURNS.

Through the error of the secretary of state of Minnesota in not furnishing the proper return-blanks to the officers of the election precincts of the State there were a number of instances where the votes polled for the candidates for Congress were not returned to and counted by the county canvassing boards. In the case of the votes not so returned and canvassed in certain precincts of the counties of Stearns and Morrison it was conceded and agreed by both parties that the votes had been cast and should be counted. These votes were as follows: (See p. 260, 284.)

STEARNS COUNTY.

Precinct.	*Washburn.*	*Donnelly.*
Crow Lake	7	11
Holding	25	64
Township of Saint Cloud	7	93
Sauk Centre	96	160
Fourth ward City of Saint Cloud	8	68
	144	396
Majority for Donnelly		252

MORRISON COUNTY.

Precinct.	*Washburn.*	*Donnelly.*
Two Rivers	30	120
Swan River	38	45
	68	165
Majority for Donnelly		97

Supplemental returns were made eight days after the election by some of the officers of three precincts of the city of Minneapolis; but it is very clear that the election officers of the precincts had performed their duties on the night of the election; had dissolved, and were *functus officio*, and had no right to make any such supplemental returns. Mr. Washburn claimed majorities in each of these precincts, and he therefore undertook to prove the votes cast *aliunde*. In strictness of law it was his duty to have proved the votes cast by the best evidence, to wit, by counting the ballots in the ballot-boxes; and he took some preliminary steps to that end, issuing a *subpœna duces tecum* to the officers who had charge of the ballot-boxes to appear at a time named, in order that the ballots might be counted; but, as we have shown, for some reason he refused to count the ballots. There was a wide diversity in the evidence as to one of these precincts, the third precinct of fourth ward, one side claiming that Mr. Washburn had a majority of 483 votes and the other side claiming that he had but 26 majority. But we have not felt obliged to enter into these questions, inasmuch as two of these precincts, viz, the second precinct of the second ward and the third precinct of the fourth ward, were precincts in which the ballots were numbered, and they have been already disposed of in our finding upon that question. In the other precinct, the first precinct of the first ward, there was a conflict of testimony as to what the vote really was; but the burden of proof establishes to our satisfaction that in this precinct Washburn received 140 votes and Donnelly 132; and although this was not established by the best evidence we are willing to admit the vote as such.

In the township of Leaf Valley, Douglas County, (p. 270), Mr. Donnelly received all the votes cast for Congressman, to wit, 61 votes; they were not returned or counted for him. These votes are to be added to the respective candidates.

ISANTI COUNTY.

The statutes of Minnesota, (sec. 19, p. 58, revision of 1866,) provide that the county canvassing board of each county shall consist of the county auditor and two justices of the peace, to be by him selected. In the case of Isanti County, the canvass was made, the votes counted, and the return made by the county auditor, one justice of the peace, and *the judge of probate of the county.* (See p. 69, printed test.) It is true that sub. 3, sec. 1, title 1, chap. 3, vol. 1, Bissell's Stat. of Minn., provides that "words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such persons or officers." If the county auditor had selected two justices of the peace, and one had failed to attend, then the majority present might, under this law, have gone on and acted; but in the case of Isanti County the county auditor did not select two justices of the peace as the law required; the board of canvassers, therefore, was never constituted as required by law, and never having had a legal existence, there could be neither majority nor minority of it.

In the contested election case of Howard *v.* Cooper, of Michigan, Thirty-sixth Congress, (see Contested Elections 1864–'65, p. 282), the Committee of Elections say:

> Your committee have rejected the vote of the township of Van Buren. The law requires that the board of inspectors shall be constituted of three persons in number. The proof is clear that there were but two. And as there was no board of inspectors known to the law, your committee see no way by which any legal effect can be given to the returned vote. They have therefore deducted it.

In this case it was shown that there was a statute of the State of Michigan precisely the same as that just quoted from Minnesota, giving a majority of a board the power to act for the whole board; but the committee did not consider that it was sufficient to permit them to receive and count the return.

But, if we will suppose that the board of county canvassers of Isanti County had been duly constituted as required by law, and that a majority had the power to act for the whole board, nevertheless, the return could not be received, for it appears upon its face that a third party, not a member of the board; a stranger, not qualified to act; an usurper without color of authority, intruded himself into the deliberations of the board and acted as one of them, and in all cases where the county auditor and the justice of the peace differed in opinion he gave the casting vote, and thus decided the action of the board. The statutes of Minnesota show that a judge of probate has none of the functions of a justice of the peace, and the constitution of the State (sec. 7, Art. VI) provides that a probate court "shall have no other jurisdiction, except the estates of deceased persons and persons under guardianship." There is no testimony to show that this judge of probate was at the same time a justice of the peace, and if he had been his exercise of the office of justice of the peace would have been incompatible with the spirit of the constitution of the State.

In the case of James Jackson *vs.* Genl. Anthony Wayne (Clark & Hall, p. 47), a Georgia case, decided in 1791, it was held that "where the law requires three magistrates to preside at an election and a return was made by three persons, two of whom were not magistrates, the return was defective"; and the vote of the county was rejected.

In the case of Rufus Easton *vs.* John Scott (Clark & Hall, p. 272), a Missouri case, decided in 1816, held, "if an election is required by law to be held by three judges, who are required to be sworn, and it is held by two not sworn, their proceedings are irregular, and the votes taken by them are to be rejected."

In the case of Sloan *vs.* Rawls (Contested Election Cases, 1871–'76, p. 144), a Georgia case, decided in 1874, it was held that a county canvass, or consolidated return of the vote of the county of Bullock (containing 1,061 votes), should be rejected, although the same was in due form and with the names of the proper officers signed to it, because it appeared that the canvass was made by a usurper, a stranger, a man "who had no legal connection whatever with the election, and no right to the possession of any of the papers."

It is urged that although the judge of probate was not a justice of the peace, we must regard him as such *de facto*. Lord Ellenborough said, in The King *vs.* The Corporation of Bedford Level, 6 East., 368:

> An officer *de facto* is one who has the reputation of being the officer he assumes to be, and, is not a good officer in point of law.

Charles O'Conor, in his argument before the Electoral Commission, said (see Electoral Commis., p. 132):

The *de facto* officer is one who somehow has clothed himself with the reputation of being the officer, and in relation to that person the law with its wise conservation, has declared that during the period that the person *pretending title to the office* was in apparent possession of all its powers and functions, and exercised the duties of it, his acts, as it respects persons who in the ordinary course of things were obliged to recognize him and to act under him and in conformity with his directions and his power, shall be esteemed valid, *that individuals may not be deceived* by this species of disorder or temporary insurrection that has broken in upon the functions of government.

The principle does not apply to the case under consideration.

Here the judge of probate did not claim to be a justice of the peace; he did not exercise the duties of the office under *color of law;* he did not exercise them at all; he distinctly claimed that he was a judge of probate and nothing else. It has never been pretended, in any court in the world, that when A. B. asserts himself to be the incumbent of one office, a presumption of law arises that he holds another, an entirely different, and, (as in this case), an incompatible office.

A party claiming to be a judge of an election precinct, or a sheriff, or a judge may deceive and mislead innocent third parties to their damage; and hence the law wisely says that he who deals with such officers shall not be required to go back and inquire into every particular of their title. But in this case there is no pretense that any one was or could have been misled by the declaration of the judge of probate that he was the judge of probate.

Neither is this a collateral proceeding between third parties. The validity of the return itself, and the right of the judge of probate to act, are the very questions in issue. The canvassing board of Isanti County was part of the machinery by which the votes cast for member of Congress in that district is to be brought to the knowledge of the House of Representatives, "the sole judge of the election returns of its members."

It must also be remembered that in the cases cited, as decided by former Congresses, the votes of townships were cast out because the boards of election judges, or the clerks thereof, were not constituted according to law. This being the law as to mere precinct officers, how much more strongly does the principle apply to the case of a canvassing board of a county where the votes, not of one precinct alone. but of all the precincts of the county are involved? An election judge can only rule out a few voters, a canvassing board may rule out the votes of entire townships. Although the canvassing board is a ministerial body, nevertheless there are many preliminary questions upon which they are called to decide, and which require the exercise of their best judgment. Among these are the following. Whether the returns are the actual returns or forgeries; whether they are so informal or irregular as to prevent the board determining what the vote really was; if two returns come in from the same precinct, which is the proper return; if votes are cast bearing a name nearly the same or somewhat similar to the name of one of the candidates, whether they should be counted for such candidate; if votes are cast for A. B. (who is a candidate for Congress), as a candidate for the State legislature, whether such votes should be returned for him as a candidate for Congress. These and a hundred other similar questions may arise requiring the exercise of judgment; and per consequence the functions of the board of county canvassers is as far superior to the functions of mere election officers as the powers of a State canvassing board are above the powers of a county canvassing board. How important, then, does it become that the county board of canvassers shall be constituted in strict conformity with law, and that

no usurpers shall be permitted to intrude into and control its deliberations.

In the case of Delano *vs.* Morgan, Ohio, (2 Bartlett, p. 171), it seems that a person acted as one of the judges of election who was believed to have been a deserter, but had never been convicted of the crime. The committee of elections say, (and the House sustained the report):

"In the case of Howard *vs.* Cooper, (Cont. Elect. 1864–'65, p. 282). the returns of Van Buren township were rejected because there were only two judges. If a return is untrustworthy when one of the judges is absent, it is certainly more so if the vacancy is filled by a person disqualified to act. Two competent judges are certainly more reliable, when acting by themselves, than when advised, directed, and in part overruled by a third, pronounced by the law unfit for the trust."

In Morgan *vs.* Delano, the disqualification of this third party was inferential; for as he had never been convicted of desertion the presumption of law was that he was not guilty; but in the case of the canvassing board of Isanti County the disqualification of the judge of probate was statutory, absolute, and appears on the face of the return.

If the objection to this return was purely technical we might hesitate to reject it; but it appears that the *bona fides* of the vote were put in issue by the pleadings.

The contestant, Donnelly, in his notice of contest, Art. VIII, declared: "That the votes alleged to have been cast for you, (Washburn), at said election in the county of Isanti, in said district, were not cast or counted for you, or returned or canvassed as provided by law." There are here four averments: (1) that the votes were not cast; (2) that they were not counted (by the precinct officers); (3) that they were not returned as provided by law; (4) that they were not canvassed as provided by law. The contestant having established, by the return itself, the truth of the last two charges, it became the duty of the sitting member to prove, by a counting of the votes in the ballot boxes, that the votes were actually cast as claimed by him; and by proper testimony that they were duly counted by the precinct officers. As he has failed to do this, the presumption of law is that he was unable to do it. There was no obligation upon the part of the contestant to prove or disprove votes that had no existence before the committee in any legal return, while Mr. Washburn well knew that the fact of any such vote being cast in the county was denied by contestant and that the burden of proof was on him to prove it. The committee has no way to ascertain the votes cast except by the official return and where this is manifestly void by testimony showing what the vote really was.

POLK AND KITTSON COUNTIES.

The return upon which the votes of these counties is based is extremely imperfect. It is as follows, (p. 64):

Abstract of votes cast in the county of Polk & Kittson and State of Minnesota, at the general election held in the several townships and wards of said county on the first Tuesday after the first Monday, being the fifth day of November, A. D. eighteen hundred and seventy-eight (1878), *for members of Congress, taken from the official returns.*

MEMBER OF CONGRESS.—CONGRESSIONAL DISTRICT —NAMES OF CANDIDATES.

Names of townships and wards.	W. D. Washburn.	I. Donnelly.
Bygland	32	3
Farley	9	24
Vineland	35	7
Fosum	50	.....
Andover	21	.....
Red Lake Falls	78	6
Lowell	26	10
McDonaldville	36	15
1st district	23	.....
Fisher	37	51
Huntsville	48	19
Nelly	41	.....
Crookston	213	45
Kittson Co., Tamrac River	109	1
Kittson Co, Two Rivers	74	1
Total number of votes	832	182

We do hereby certify that at said election W. D. Washburn received eight hundred and thirty-two (832) votes for member of Congress; I. Donnelly received one hundred and eighty-two (182) votes for member of Congress.

A. YVERNAULT,
County Auditor.

Attest:

D. C. PALMER,
T. A. HARRIS,
Justices of the Peace.

There is an unorganized county of Kittson in the Third Congressional district of Minnesota, as appears by the abstract of votes returned by the Secretary of State (p. 347); and there is, also, an organized county of Polk; but there is no "county of Polk and Kittson." (See p. 346.) And there is no law linking these counties together. It appears by the testimony, (p. 40) that "the county of Kittson is not attached to any other county for any purpose, either judicial or election." The county out of which it was created, Pembina County, was attached to Clay County, (Stat. of Min. 1876, p. 127.) If, therefore, any part of the above returns refer to the unorganized county of Kittson they should not have been returned to, canvassed with, or mixed into the returns of the organized county of Polk. The foregoing certificate is not a return of votes cast in Polk County, or of votes cast in Kittson County, but the vote is lumped together as the vote of "the county of Polk and Kittson," and there is no such county in the district. And if we attempt to separate the precincts in Kittson County from the precincts in Polk County, so as to enable the county of Polk to be counted by itself, we are met by the fact that Farley is shown by the testimony (p. 226) to be in Kittson County, although there is nothing on the face of the return to show that fact. There is no evidence to show in which county the

precincts of Bygland, Vineland, Folsom, Andover, Lowell, McDonaldville, 1st district, Huntsville, and Nelly are situated. Neither does it appear by the return, or in the evidence, that the county auditor and justices of the peace who signed the return held those offices in Polk County or in Kittson County, or in any other county.

Moreover, it appears (p. 233) that there were but 86 legal votes cast at Crookston, while the total vote returned as above was 258; there were therefore 170 illegal votes cast at that precinct; they were principally the railroad hands referred to in this report in our consideration of the subject of bribery, every one of whom was paid for his vote. It also appears, (p. 234), that there were but 40 residents of the precinct of Fisher, while 88 votes are returned from that precinct. The precincts in the county of Kittson were not legally established, there being no law to authorize the governor to create election precincts in wholly unorganized counties; there were no registration lists at these precincts; cigar-boxes and candle-boxes without locks or keys were used for ballot-boxes; in one precinct the voting place was a railroad car; in another a railroad depot; nearly if not quite every vote polled in two precincts of the county, as we have shown, was a bribed vote, and cast in the majority of instances by men who were not legally residents of of the county and entitled to vote therein.

This fraudulent vote of Kittson County having been inextricably mixed into whatever legal votes were cast in Polk County, it became the duty of the sitting member to go behind this very defective certificate of "The county of Polk and Kittson" and prove *aliunde* what townships were in Polk County, and by a count of the ballots in the ballot-boxes of those townships establish, beyond question, what votes were legally cast therein. Having failed to do this we are constrained to reject the return.

THE UNORGANIZED COUNTIES.

It appears by the evidence that a number of the counties in the third Congressional district of Minnesota are unorganized counties; the following table gives the names of the counties and the votes cast therein:

	Washburn.	Donnelly.	Majority.
Big Stone	45	29	
Douglas	682	489	
Kanabec	109	24	
Lake	29		
Otter Tail	940	755	
	1,805	1,297	
Majority for Washburn			508

It was decided by the supreme court of the State of Minnesota, July 29, 1878, in the case of State *ex rel.* Lindholm *vs.* Parker, that the county of Big Stone was not an organized county, inasmuch as the legislature had never passed an act declaring it organized. The court held that neither an act defining the boundaries of a county, nor the vote of the people therein electing county officers, constituted a county organized; the legislature must recognize the action of the people by explicitly declaring it an organized county. The counties of Douglas, Kanabec, Lake, and Otter Tail are in the same condition as the county of Big Stone. Mr. Washburn did not produce any statute to show that the legislature had ever declared either of them organized. It follows that if these counties are not organized counties there can be no county officers

in existence therein; and that those who claim to have canvassed and returned the votes of the counties had no power to do so; nor can there be any legal election precincts therein. But your committee are not disposed to take a technical view of this matter, and although we are of opinion that the counties in question are not legally organized, nevertheless as the votes returned are conceded to have been actually cast therein, and there is no charge of fraud, we have concluded that the four counties last named should be regarded as *de facto* organized counties so far at least as election purposes are concerned. We also admit the vote cast in the unorganized county of Big Stone, for he reason that it is admitted by contestant that the vote was actually cast; and there is no charge of fraud in connection therewith.

We therefore admit the votes of these unorganized counties. They give a majority for Mr. Washburn of 508.

It will be seen that in the foregoing report we have not rejected the vote of any county because it was unorganized; neither have we rejected the vote of any precinct because of the numbering of the ballots *per se*, but because such numbering was one of the incidents of a system of fraud and intimidation; neither have we rejected the votes of any counties for mere informalities on the face of the returns; but only for those gross irregularities which were manifestly incompatible with a legal canvass of the votes.

The following table summarises the results of our investigations in this case:

SUMMARY.

The total vote returned for William D. Washburn was...		20,942
This includes the supplemental returns from Hennepin County.		
Add to this the votes cast, but not returned for him, in the counties of Stearns and Morrison, viz, Stearns, 144; Morrison, 68—total		212
		21,154
Deduct:		
The numbered ballots cast for him in the seven precincts of Minneapolis, viz	2,282	
The vote returned for him in the county of Isanti.....	538	
The vote returned for him from "the county of Polk and Kittson"	832	
		3,652
		17,502

Deduct also the following bribed votes, (not included in the bribed votes already rejected in Polk and Kittson County,) where the evidence shows the party received money and voted for Washburn—(1,) Oluf Larson, St. Paul; (2,) Abraham Werrick, St. Paul; (3,) Wm. M. Leyde, Cottage Grove; (4,) Christian Heyer, Afton; (5,) John C. Oleson. Minneapolis; (6,) A. M. Schaack, Minneapolis; (7,) Karl Fintler, Minneapolis; (8), Henry Monroe; (9,) Sevit Mahla, of Minneapolis; (10,) Louis Knudson, Minneapolis; (11,) Louis Paulson, Minneapolis; (12,) W. R. Metcalf, of Crystal Lake; (13,) Peter Quady, Minneapolis; (14,) Louis N. Gayuor, Minneapo-

lis; (15,) Peter Engberg, Minneapolis; (16,) Bernard Cloutier, Minneapolis; (17,) Toleff G. Fladeland, of Sauk Center; (18,) J. V. Brower, of St. Cloud; (19,) A. J. Clark, Little Falls; (20,) Thomas Kitowski, of North Prairie; (21,) Mr. Buss, of Long Prairie; (22,) Henry Armstrong, of Two Rivers. [This list does not include a large number who admit the receipt of money from Washburn or his friends but claim that they voted for Donnelly,]—Total		22
		17,480
Total vote returned for Ignatius Donnelly		17,929
Add to this the vote scast, but not returned, for him, from the counties of Stearns, Morrison, and Douglas, viz, Stearns, 396; Morrison, 165; Douglas, 61; total		622
		18,551
Deduct:		
The numbered ballots cast for him in the seven precincts of Minneapolis, viz	522	
The vote returned for him in the county of Isanti	137	
The vote returned for him from the county of Polk and Kittson	182	
		841
		17,710
Total vote for Donnelly		17,710
Total vote for Washburn		17,480
Majority for Donnelly		230

We would, therefore, report and recommend the adoption by the House, of the following resolutions:

Resolved, That William D. Washburn is not entitled to his seat as a member of the Forty-sixth Congress of the United States, as Representative from the third Congressional district of the State of Minnesota.

Resolved, That Ignatius Donnelly is entitled to his seat, as a member of the Forty-sixth Congress, as Representative from the third Congressional district of the State of Minnesota.

VAN H. MANNING.
S. L. SAWYER.
R. F. ARMFIELD.
F. E. BELTZHOOVER.
W. G. COLERICK.

:EIFER, from the Committee on Elections, submitted the following

VIEWS OF A MINORITY.

contest in this case arises over the election for member of the
e of Representatives in the third Congressional district of the State
nnesota, held on the 5th day of November, 1878. This district is
osed of thirty-eight counties, situate in the northern part of that
and comprises a very large territory, which has been very rapidly
ıg up by emigration from other States in the Union. The returned
t that election for member of the House of Representatives was
ows:

Washburn	20,942
ıs Donnelly	17,929
ing	40
urned majority for Washburn was	3,013

s district was created on the 22d day of February, 1872, by act of
gislature of Minnesota. It has always been Republican by a large
ity. The Republican majority for Congressman in this district in
vas 6,449; in 1874, 2,319; in 1876, 2,096; in 1878, 3,013. The Re-
an majority in this district for governor in 1877 was 8,153, and in
Pillsbury's (Rep.) majority over Rice (Dem.) was 5,681.

on of the committee have decided to add to Mr. Washburn's returned of		20,942
returned vote in the counties of Stearns (144) and Morrison (88)		212
ıs increasing his vote to		21,154
this it is proposed to deduct by throwing out and rejecting—		
mbered ballots cast for him in seven precincts of Minneapolis, t	2,282	
ire vote returned for him in the county of Isanti	538	
al vote returned for him from the counties of Polk and Kittson	832	
bribed votes	22	
al to be deducted		3,674
g Mr. Washburn's vote		17,480
ther proposed to add to Mr. Donnelly's returned vote of		17,929
returned votes alleged to have been cast for him in the counties of ıs, Morrison, and Douglas		622
ıs increasing his vote to		18,551
his it is proposed to deduct the numbered ballots cast for him city of Minneapolis	522	
e returned for him in the county of Isanti	137	
e returned for him in the counties of Polk and Kittson	182	
al to be deducted		841
Donnelly's vote		17,710
majority over Mr. Washburn		230

The testimony in this case, and the arguments of counsel, have compelled the committee to examine a great many questions foreign to the contest, as made on the contestant's notice. That notice consists of nine paragraphs; very few, if any, of which state, as required by the law of Congress, except in very general terms, the grounds upon which the contestant relies. The law, as set forth in section 105 of the Revised Statutes, requires that the contestant, in his notice, shall specify *particularly* the grounds upon which he relies in the contest. This the contestant has not done, although the nature of his contest is such that he could have done so, and should have been required to do so; or, otherwise, the great mass of his testimony should have been disregarded. The United States statute requires that "the testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice or answer," &c. (R. S., sec. 105).

It may be true that the law of Congress prescribing the mode of practice to be followed in the House in contested-election cases is not absolutely binding upon the House in view of the provisions of the Constitution of the United States (Article I, section 5) which provide that "each house shall be the judge of the elections, returns, and qualifications of its own members." But it might work very great injustice to a contestee to require him to meet a case outside of this parliamentary-practice act, without any previous notice to him that the House intended to depart from it in a material respect.

Until the House itself lays down and prescribes a different mode of contesting elections before it, the parties to the contest have a perfect right to rely upon the statute being strictly observed and followed. (McCrary's Election Laws, secs. 341–3, 348–9, 353; Finley *vs.* Bisbee, Rep. 95, p. 28.)

It has frequently been held by the House that notwithstanding proof was offered sufficient to show that frauds had been committed, such proof would not be considered because the contestant did not specifically notify the contestee of such ground of contest.

For a full discussion of this point, attention is called to the views of the late Speaker Kerr in the case of Delano *vs.* Morgan (Com. Elec. Cases, 1865–'71, pp. 176–8).

Before proceeding to consider the case as made by the notice and on the testimony, it is thought proper to refer to the character of evidence relied upon by the contestant. It will be found by an examination of the record that there is very little, if any, testimony which would be received or considered in any court of justice in this or any other civilized country. The testimony may be, generally, denominated hearsay. In so far as it relates to the question of bribery or illegal voting very little of it rises even to the dignity of *hearsay* when scrutinized. It is understood that certain members of the committee, in order to arrive at the conclusion reached by them, have considered all, or very nearly all, of such incompetent testimony found in the record. With the single exception, that in the case of a voter who has voted for the sitting member, declarations of the voter are inadmissible. There are authorities, though they even are doubted, to the effect that the declarations of a voter, though hearsay evidence, are competent to prove his want of qualification to vote. It is seldom, if ever, proper to regard hearsay statements as competent evidence. Regarding the testimony as affecting the voter, and no other person, his statement as to his qualification to vote may be taken as an admission against him. The ordinary rules of evidence apply as well to election contests as to other cases. (See McCrary's American Law of Elections, section 306.) We do not think

it necessary to cite many authorities in support of this proposition, but we here give a few, as this question is a very important one in the determination of this case:

AUTHORITY AS TO HEARSAY EVIDENCE IN CONTESTED-ELECTION CASES BEFORE PARLIAMENTARY BODIES.

In Cushing's Law and Practice of Legislative Assemblies, at section 210, page 76, the following doctrine is laid down:

"The same general rules by which courts of law are governed in regard to evidence in proceedings before them, prevail also in the investigation of cases of controverted elections; but inasmuch as a legislative assembly, touching things appertaining to its cognizance, is 'as well a council of state, and court of equity and discretion, as a court of law and justice,' the legal rules of evidence are generally applied by election committees, more by analogy and according to their spirit, than with the technical strictness of the ordinary judicial tribunals."

Section 11. "The rule stated in the preceding paragraph relates of course only to investigations by the testimony of witnesses or other evidence before the assembly or its committees, but where the testimony is contained in depositions, they ought to be taken according to the law of the State where they are taken."

Section 742, page 293. "The proceedings of a legislative assembly frequently render it necessary to institute inquiries into matters of fact, and of course to receive and judge of the various kinds of evidence upon which human conduct is predicated, and which may be submitted to its consideration. In the every-day affairs of life, and in reference to matters in which *their own interests are alone involved*, men act upon every kind of evidence which has even the slightest tendency to induce belief. *But in regard to affairs in which parties are adversely interested, and in which there are conflicting rights and claims to be adjudicated*, the law has wisely provided that only such evidence shall be received, and under such circumstances as shall afford reasonable security both against designed falsification and unintentional mistake."

Section 743, page 293. "The rules of evidence by which courts of justice are governed, and by which their proceedings are regulated in the investigation of the cases which come before them, make a part of the civil rights of the citizens, as much as the rules regulating the acquisition, the enjoyment, or the transmission of property, or which govern any other matter of civil right; and when a question of the same nature is pending in the legislature, involving private interests only, no good reason can be assigned why the rules of evidence should not be the same. It would seem reasonable, therefore, to regard it as a rule of parliamentary practice, that when the private interests of individuals are the subject of investigation, or, in other words, where the investigation is a judicial one, *and so far as it is of that character*, the same or analogous rules of evidence should be applied, as would be observed in the investigation of similar interests in any of the courts of law or equity, and this appears to be the rule which has prevailed in modern times."

Cases of Contested Elections in Congress, 1834 *to* 1865.

White vs. *Harris*, page 257. In this case, on pages 264–5, the question of the admissibility of hearsay testimony is discussed; it was rejected. Report by Hon. Thomas L. Harris.

Same book, page 33. *Ingersoll* vs. *Naylor*. *Syllabus:* "Where extensive frauds were alleged, the committee refused to receive hearsay evidence."

On page 34 the question of the hearsay evidence is discussed and the evidence rejected.

Same book, page 19. *The New Jersey Case*. *Syllabus:* "Held by the committee that hearsay declarations of the voter should be rejected."

On page 24 of the report of this case the committee, in discussing the question of what votes were actually cast at the polls, use this language:

"The first proposition involved the inquiry whether the vote was actually cast at the polls, and for the ascertainment of this point the committee necessarily resorted to parol proof as the best evidence which the nature of the case would admit of, *the laws of New Jersey not requiring the poll-lists to be preserved as a record of the actual voters*. *Mere* hearsay declarations of the alleged voter as to the fact of his having voted *have been uniformly rejected*."

Cases of Contested Elections in Congress, 1865 *to* 1871, *page* 822.

John S. Reid vs. *George W. Julian*. *Syllabus:* "Hearsay evidence inadmissible." (See also McCrary's Law of Elections, § 306.)

Hearsay evidence is not admissible to prove bribery as a *disqualification*, but only to affect or annul individual votes. (Cowen & Hill's Notes, 704–7; 3 McCord (S.C.) Rep., 230, *note; People vs. Pease*, 27 N. Y., 45, 49.)

It is proper to observe that much of the hearsay evidence relied upon consists only of conclusions drawn from conversations held after the election, which are always unreliable, and as a general rule, even though the testimony would otherwise be competent, are regarded as very dangerous if at all admissible in a court of justice. Of this latter class of testimony a learned judge has said:

> No class of testimony, perhaps, is more unreliable, and a more frequent cause of error in courts of justice, than the narration of conversations, real or pretended. The meaning and intention of a person in a conversation often depend much upon gesture, attitude, mode of expression, or peculiar attending circumstances, known, perhaps, to but few present. A conversation may not be fully heard by the witness, imperfectly recollected, or inaccurately repeated, when the omission or addition of a single word, or the substitution of the language of the witness, under color of bias or excitement, for the words actually used, might change the sense of an entire conversation. This is apparent from the irreconcilable contradictions daily manifested in the narration of the same conversations from the mouths of different witnesses. The liability to error, in this kind of testimony, would be greatly increased by allowing witnesses to add their own *conclusions*, or *understandings*, from the conversation related, or their inferences as to the *understanding* of the parties to the conversation. Such latitude would break down an important barrier which protects judicial investigation from error and falsehood. The understanding or inferences of witnesses are very frequently formed from bias, inclination, or interest. And a witness's understanding or inference from a conversation or transaction rests entirely in his own mind, and his consciousness of falsehood would be incapable of proof; so that there could be no possibility of convicting a witness of perjury on the ground of such evidence. (Judge Bartley, 3d Ohio St., p. 412.)

It may be further noted that the charge of bribery, like that of fraud, must be proved and not presumed. This is a universal rule of law when it is sought to convict a party of a crime. There is a difference of opinion among members of the committee as to what rule should prevail in a contested-election case, in proving the crime of bribery. Some members of the committee maintain that it should be proved, as in criminal cases, "*beyond a reasonable doubt.*" Others are satisfied with the rule which requires the testimony to be "*clear, satisfactory, and convincing,*" but all should agree that so serious an offense as bribery should be proved and not presumed.

THE CHARGE OF BRIBERY.

Before going into the testimony and considering it in the light of proper rules of evidence, it should be said that there is evidence tending to show that in this district the friends of the contestant and contestee both used money to poll the district (pp. 86–7 and 255), and to provide means for getting to the polls voters who were remote from the polling places, and who were often without conveyances of their own in which to travel to the polls on election day. Money was undoubtedly spent to pay canvassers before the election, and in some instances men were employed at the polls to hold tickets for the respective parties. The district is a very large one in point of population and in extent of territory, and in consequence of this, greater effort was required to get out a full vote. Some money was also expended to pay speakers to go over the district. The committee is not prepared to say that such use of money is entirely illegitimate. It is very common, if not universal, in all contested elections throughout the United States for candidates and their friends to use such means to secure votes. Presidential elections are not exceptions in this respect.

Certain members of the committee rely very much upon the fact that the sitting member was not willing to dignify the case of the contestant by calling witnesses to disprove the alleged testimony offered by him. It

is a sufficient answer to this to say that there is very little in any of the testimony offered by the contestant, for the purpose of proving bribery, that is in any sense worthy of being met by any testimony, even though it could be regarded as competent testimony. A reading of the testimony of the several witnesses will show in most, if not all, the cases that it proves nothing that is worthy of answer. The witnesses called in many instances only make clear the fact that they were disappointed parties who desired to be bribed by being paid large sums of money, which they were disappointed in obtaining. The first witness mentioned in the report of the committee, a Democrat, by the name of Charles Berens, of Morrison County, is an example of this. He testifies that he wrote a letter to Mr. Washburn requesting to be paid fifty dollars to support him. It is not clear that this letter was ever received by Mr. Washburn in person. Mr. Berens received no answer from Mr. Washburn to this letter, and he received no money from Mr. Washburn. Some of the committee, however, lay much stress on the fact that Mr. Washburn, or some of his friends, did not, prior to the election, indignantly resent the proposition made to him by Berens as an insult. There was no good reason why Mr. Washburn, or any of his friends, should have done so. They were undoubtedly anxious not to make any enemies, even though they were wholly unwilling to pay a man for his support. It will be noticed that Mr. Berens did not propose to sell his vote to Mr. Washburn, but simply, as appears by the whole testimony of this witness, to work for Mr. Washburn, presumably to get out voters, or to induce, by argument or otherwise, other persons to vote for him (p. 300). It appears from the testimony of this witness that he wrote also to Mr. Donnelly, to solicit him for money as an inducement to support him at that election (p. 301). This witness says that had he received the fifty dollars which he solicited, he would not have supported Mr. Washburn; and in the conclusion of his testimony he utterly disproves the charge, so far as his knowledge goes, that any money was used by Mr. Washburn or his agents to influence persons to vote for Mr. Washburn at the election. As Berens opened negotiations with Donnelly and supported him (p. 301), the only presumption that can arise, if any, is that he bribed him. This witness refers to a Mr. Brower, who, it is claimed, acted for Mr. Washburn in the vicinity of where he lived. But it turns out that, notwithstanding his vigilance in trying to find that somebody had been bribed, he utterly failed. The following questions to this witness, and the answers thereto, set at rest this witness's testimony, so far as bribery is concerned (Record, p. 301):

Q. Do you know of Brower's paying any money to any person for his vote for member of Congress or for any other candidate to be voted for at the last election, held November 5, 1878, or during the canvass immediately prior thereto?—A. I did not see him give any.

Q. Do you know of any money being paid or promised by William D. Washburn or his agents, or by any person or persons acting for him with his knowledge, to any person or persons during the last election, held November 5, 1878, or during the canvass immediately preceding said election, for such person or persons' vote or votes or influence for William D. Washburn for member of Congress for the third Congressional district of Minnesota?—A. Not that I know of.

Q. Do you know of any person in this vicinity trying to corrupt a candidate for Congress by demanding of such candidate $50 as a consideration for his supporting such candidate at said election?—A. I did it myself.

There is an attempt to show that in the county of Kittson certain persons were bribed to vote for Mr. Washburn. If this were true, there is no evidence even tending to show that he was in any sense a party to it. The committee seem to think that the number of votes cast in this

county was too great. The total vote of the county was 184. It is true that two witnesses testify on this point. The first, G. C. Morton, says (p. 125), "to the best of my knowledge there were four actual settlers in this county"; and then he adds, "that is all I know." The second, Dennis Reardon, says (p. 144), to use his own language, referring to this same county, "it was unsettled, so far as I saw, except the railroad." On this testimony it is proposed to find that a large number of persons voted who were not legal voters, and also that they were bribed. The committee fails to take into account that in new countries it is along the railroad chiefly that men settle, and that settlements spring up as rapidly as railroads are built. The testimony of Reardon shows that there were people settled along the railroad, and it is this class of men who are denominated as "*harvest hands and tramps, who had not been in the State long enough to vote.*" The witness Morton, so much relied upon, says in his testimony that he had only resided in Kittson County *eleven days* before the election, and, of course, he could have had very little means of knowing who were residents and who were not; and on a cross-examination it is made to appear that he did not know a single man who was not a resident of the county at the election on November 5, 1878. The following is an extract from the testimony of this witness (Record, p. 128):

Q. How long had you been in Tamarack, in Kittson County, prior to November 5, 1878?—A. I had been there eleven days before election day.

Q. With how many of the eighty or ninety men in the employ of Webster & White at their wood-camp at or near Tamarack were you personally acquainted on the 5th day of November, 1878?—A. About forty of them.

Q. Do you know of your own knowledge any of the eighty or ninety men so employed at the wood-camp of Webster & White, at or near Tamarack, who had not resided in the State of Minnesota more than four months and in the election precinct more than ten days prior to November 5, 1878? If so, state who.—A. I do know, of my own knowledge, of men that were there less than ten days prior to November 5, 1878. I do not know of any person who had not been a resident of the State more than four months prior to November 5, 1878. I cannot name all the names; Mr. O'Neil, for one, Guss Avenger, James Nichols, John Morrison, Guss Glyndon, ten others, whose names I can't recall now. Those names that I mentioned and ten others I cannot call to mind are those who had not been there ten days.

Q. Do you know, of your own knowledge, whether any of the persons referred to in the preceding answer as persons who had been there less than ten days voted at the election precinct at Tamarack, November 5, 1878; and, if so, whether any of that number voted for William D. Washburn for member of Congress?—A. I don't know.

Q. Do you know, of your own knowledge, whether any of the persons on the construction train referred to in your direct examination as voting at the election precinct at Tamarack on November 5, 1878, had not resided in the State of Minnesota more than four months prior to said election, and resided in that precinct more than ten days prior thereto?—A. I do not know.

The worst that can be said in relation to the vote of Tamarack precinct, in Kittson County, is that the persons who employed some of the voters allowed them for their time while going to and returning from the polls. This act on their part the committee does not approve.

It is claimed that men were bribed to vote for Mr. Washburn at this precinct. The testimony does not sustain this claim. One G. C. Morton is relied on alone to prove this charge. Aside from some conclusions stated by this witness and given without any reliable data to base them on, his statements are purely hearsay and wholly incompetent as evidence.

There is some evidence to the effect that certain men were engaged in chopping wood for two men—Webster and White—by whom they were paid for their time while attending the election, but the evidence does not even tend to show any bribery on the part of Mr. Washburn. The evidence shows these men were not even solicited to vote for Mr.

Washburn, but were allowed to vote as they pleased. Some of these men may not have been legal voters in Tamarack precinct. There is great doubt whether, under all the circumstances, the vote of this precinct should all be counted. There was no proper ballot-box, &c. (p. 309). On the question as to whether these wood-choppers were bribed, we give here the hearsay testimony of the witness Morton to show both its incompetency and unreliability (pp. 126–7):

Q. Did you have any conversation since election with Mr. Webster in reference to any payment of money for the votes of the men employed in the wood camp? and, if so, state what it was.—A. I have had several conversations with Mr. Webster since election; he has mentioned several times to me the fact that Mr. White had received the money for the purpose of defraying the expenses of the election, and that Mr. White had not paid him his share of it. He asked me if I thought he could sue White and collect the balance due him as his half of the proceed. He stated that Mr. White had received for the firm of Webster & White one hundred and eighty-two dollars, and that Mr. White had not paid him but sixty-three dollars, which he claimed was not all that was due him. He stated that Major Hale, of this city, Minneapolis, had given Mr. White a check for one hundred and eighty-two dollars, and that the check was cashed by George Webster, paymaster of the Minneapolis and Saint Louis Railroad Company. It is about the substance of it.

Q. Was this Major Hale Maj. W. D. Hale, who is the general manager of Mr. W. D. Washburn's business in this city?—A. Major Hale is the manager of Mr. Washburn's business in Minneapolis. I do not know his initials.

Q. Did you understand from Mr. Webster that the check for one hundred and eighty-two dollars referred to by you was paid to Webster & White, by Major Hale, to reimburse them for the money paid by them to their workingmen who voted at that place on the 5th of November, 1878, for their time on election day during which they did not work?—A. Mr. Webster told me that this money was to defray their expenses at the time of the election at the Tamarack.

Q. Did he say what those expenses consisted of?—A. He did not.

Q. Do you know what those expenses consisted of?—A. I do not; only by hearsay.

Q. State what you heard in regard to those expenses.—A. I have heard from several men that worked there that the money was received to pay for the men's time on election day.

Q. Did you learn from any of the men at the camp who were paid for their time in what way payment was made to them?—A. The men who worked by the day or month were allowed their regular time as if they had worked steadily; and the choppers who worked by the cord were allowed one or two days' board; they have stated it in different ways.

Q. Did you get this information from the men who were so paid or allowed board?—A. I did.

The evidence of both Webster and White utterly refutes and explodes all the statements of the witness Morton as to bribery, and it shows also that so far as money was paid at all to these men for their time while voting, it was done without the knowledge of the sitting member. It also shows that the men were not even asked to vote for Washburn.

The contestant put both Webster and White on the witness stand and then proceeded at once to cross-examine them.

We first give a full extract from Webster's testimony (pp. 296–8):

Q. Were you a member of the firm of Webster & White, wood contractors, getting out wood last fall at Tamarack, Tipton County, Minnesota?—A. I was.

Q. Did you state in a restaurant in Minneapolis, within the last thirty days, that White had received money to reimburse the firm for the money paid to their employés for the time spent in voting at Tamarack November 5, 1878, or words to that effect?—A. No, sir.

Q. Did you say that you and White had a dispute or misunderstanding about any money so paid to White?—A. Mr. White and I have had no dispute. I did not say so.

Q. Did you state at that time that you had called upon Mr. Washburn in reference to money coming to you from White?—A. No, sir; I did not know there was any money coming.

Q. Did you not say that you had made an examination at a bank in Minneapolis, and that you found there a check given to White or some other party for a sum of money in repayment of the money so paid to men?—A. No, sir; not to my knowledge.

Q. Could you have said it without your knowledge?—A. No, sir.

Q. Did you not say the check was for $250 and signed by William D. Washburn?—A. No, sir.

Q. Did you not say, at that time and place, that you had called upon Washburn in reference to the money so paid White, and that you claimed your share of it, and did Washburn tell you that he would rather pay many times the amount of it than have the transaction exposed, and that he would or did make it right with you, or words to that effect?—A. No, sir; I am not acquainted with Washburn.

Q. Did you have such a conversation with any one else?—A. Not to my knowledge.

Q. Do you swear that you did not?—A. Yes, sir.

Q. Is Mr. Webster, the paymaster of the Minneapolis and Saint Louis Railroad Company, a relative of yours?—A. Second cousin.

Q. Did your firm pay the men who cut wood for you at Tamarack a hundred and sixty or a hundred and seventy dollars or any other sum for the time spent at the polls on election day, November 5, 1878?—A. *We simply allowed them their time to go and vote;* I was not cashier; that is all of my answer.

Q. Do you pretend to say that your firm did not pay $160 or $170 to the men for their time at the election, and you not know of it because you were not cashier?—A. Certainly, if you ask a man to vote, and he says he won't vote unless he is allowed for his time, we have a right to pay him for it. *I agreed to pay them, if they would go and vote according to their own taste, for their time.* I don't care how anybody votes.

Q. Are you so fond of seeing men vote that you are willing to pay $160 or $170 for the mere luxury of knowing that they vote, without regard for whom they vote?—A. Mr. White told me it was simply allowing them their time for that day, and that he (White) could get enough money to balance the money expended for the time they lost in going to the election, as they did not want to go unless they got as much as they could in chopping wood.

Q. Who did White tell you he was to get the money from to balance the money so expended?—A. He did not tell me, nor I did not ask him.

Q. Did he ever tell you that he had got the money?—A. No, sir; I did not know what he did receive. I do not know what he received, only what I saw in the paper and his testimony.

Q. Do you pretend to say that $160 or $170 or any other large sum could have been taken out of the money of the firm to pay voters and you not know three months after the transaction whether the firm had been repaid or not?—A. I presume it could as long as he paid the bills. Mr. White and I have not settled yet on our wood contract. We have been very busy and have not had time to settle our wood contract.

Q. Have you had any conversation with any one at any time with reference to the repayment of the money so paid by the firm to the wood-choppers for their time on election day?—A. I had all I could do election day to attend to my business as judge of election, and did it to the best of my ability for both parties. Not that I know of.

Cross-examined:

Q. Did you pay anything for votes on the election day at Tamarack, November 5, 1878, or did Webster & White pay anything for votes on said day at said place, or did you simply allow the men their time to go to the polls and vote for either Mr. Donnelly or Mr. Washburn for member of Congress as they saw fit?—A. We simply allowed them their time to go to the polls *and use their own judgment in voting.*

Q. Did you try to influence the men in your employ at Tamarack to vote for William D. Washburn for member of Congress at said election held at Tamarack November 5, 1878?—A. No, sir.

Q. Did you ask one Morton, then in your employ, to use his influence with the men for Washburn?—A. No, sir; not to my knowledge.

Q. Do you know of any money being paid or promised by William D. Washburn, or his agents or any person or persons acting for him, with his knowledge, to any person or persons for his or their vote or votes or influence for William D. Washburn for member of Congress from the third Congressional district of Minnesota at or prior to the election held November 5, 1878?—A. No, sir; not to my knowledge.

Redirect-examination:

Q. Who were you in favor of for Congress last fall?—A. As I was always a Republican I voted that way last fall.

Q. Were not most of your wood-choppers cutting wood by the cord at $1.10 per cord?—A. Yes.

Q. Was not their time their own?—A. It was; but I told them if they would go and vote as they saw fit I would allow them their time, as they would not go without it.

Q. How could you allow them their time when their time was their own, as they were not hired by the day or month?—A. If they had not went to the polls they would have cut a cord and a half of wood, which would have amounted to $1.50, so we allowed them the same; did not care who they voted for.

Q. About how many of them voted?—A. I judge about 50 or 60 voted; there might have been more or less.

Q. Then you paid for about 75 cords of wood which you never got?—A. I did not say so.

Q. You said that White told you that he could get enough money to balance the money paid for the men's time in voting. If the men had all voted for Donnelly would he have got the money?—A. Yes, sir.

Q. Who would have paid it?—A. I should have paid it and calculated that you, Donnelly, would have made it good.

Q. But as the votes were all but one for Washburn did you calculate that Washburn would make it good?—A. No, sir; the other answer was said in joke.

Here are also full extracts from the testimony of the witness White, of the firm of Webster & White (pp. 306, 307, 308, 309, 310):

Q. Was an election held at Tamarack on the 5th of November, 1878, for Congressman and State and county ticket?—A. There was an election held for State officers and Congressman, but no county officer, I think. The county was unorganized at that time.

Q. Did you vote at that election there?—A. Yes, sir. I decline to say for whom I voted.

Q. Did any of the men in your employment vote at that election; and, if so, how many?—A. Yes, sir; I guess all the legal voters voted; cannot tell exactly how many.

Q. Did a majority of your men vote there?—A. Yes, sir.

Q. Did two-thirds of them vote?—A. I should judge, may be, more than two-thirds of them voted.

Q. Were the men paid for the time consumed in voting?—A. They were allowed their time. Most of the men said they would like to go and vote; didn't feel able to lose the time. Most of them were earning good wages. I told them to go and vote and I would allow them their time.

Q. Do you mean that you would allow them pay for the time spent at the polls the same as if they had been working for you all the time?—A. Do not know that I told them that; I told them I would allow them their time.

Q. Did you, in settling with them, pay them for the time they were absent from work on that 5th day of November, 1878?—A. I didn't settle with them; I had a bookkeeper for that purpose.

Q. Was anything deducted from the pay of the men who worked by the day or the month on account of absence at the election that day?—A. No, sir.

Q. In settling with the men who cut wood by the cord, was not an allowance made on their bill for board of the time spent at election that day?—A. I do not know.

Q. Were you present when any of the men were settled with?—A. Yes, sir.

Q. Do you not then know that the wood-choppers who chopped by the cord were allowed one or two days' board for the time spent at the election?—A. No, sir.

Q. Do you swear that such an allowance or some other allowance was not made to those men?—A. I said before they were allowed their time. Most of them were working by the cord, a few by the month—a very few.

Q. If each man was to receive so much for each cord of wood cut, whether he cut ten cords or one hundred, was not his time his own, and what do you mean when you say you allowed him his time?—A. I mean they said they wanted to go and vote, but they could not lose the time; that in all probability, during the time spent in going to staying at the polls, and returning, they might have cut a cord and a half or two cords of wood.

Q. How much were you paying them for cutting wood by the cord?—A. One dollar and ten cents per cord.

Q. Then you paid these men for a cord, a cord and a half, or two cords that they never cut for you?—A. Don't know as we allowed them any such thing as that; I think we allowed them about what they could have cut in a day.

Q. What was the gross sum that you paid, or allowed in this way?—A. I don't know; I think $160 or $170.

Q. Has that money been repaid to you?—A. Yes, sir.

Q. Who by?—A. By a man named George B. Webster, who gave me a check on the bank; think it was the First National, of Minneapolis.

Q. What was the amount of that check?—A. It was either $168 or $172.

Q. Who is this Mr. Webster?—A. The paymaster of the Minneapolis and Saint Louis Railroad.

Q. Who is the president of that road?—A. W. D. Washburn.

Q. How did the paymaster of the Minneapolis and Saint Louis road happen to pay you for wood cut, or the time of your employés, under a contract for the Saint Paul and Pacific Road?—A. Well, I will tell; he was a friend of mine, and I went to him, asked him if he could let me have $168 or $172, or loan me that amount. He took out his little bank-book, said he had just about that amount in the bank, and, if it would accommodate me, he would let me have it. *It was his individual check.*

Q. Have you ever repaid him that amount?—A. No, sir.

Q. Did *you give him your* promissory note for the amount at the time he gave you *the check?—A. No, sir.*

Q. Whose name was to the check you received for that money?—A. George B. or G. B. Webster; can't tell exactly when it was given. Quite confident it was after election; might have been eight or ten days after election.

Cross-examined by F. HOOKER, Esq., on behalf of contestee:

Q. *Was there anything said to the men by yourself at the camp that tended in any way to unduly influence those men to cast their votes for either W. D. Washburn or Ignatius Donnelly for member of Congress at the election held at Tamarac, November* 5, 1878?—A. *No, sir;* some of the men said they would like to go and vote. Some of the men asked me if I had any choice; I said I was friendly to Mr. Washburn; that they could vote for either Mr. Donnelly or Mr. Washburn as they saw fit. This was in substance all I said to the men about voting for either Mr. Washburn or Mr. Donnelly. When they came to count the votes I was much surprised to find that Mr. Donnelly had no more votes. *I did not know which way the vote would go. I did not know but Mr. Donnelly would get 40 or 50 or 60 votes. Didn't ask any one how they would vote.* I suppose there was an opportunity for all to get tickets. There were several settlers in that vicinity. Everything was quiet and orderly at the polls. The polls were open at exactly nine and closed at five. No person voted at that precinct who was not known to the judges to be residents of the precinct. In Morton's testimony he mentioned the names of Nichols and Morrison as illegal voters or from Canada. I know they did not vote. They said to me that they thought they had no right to vote, and I told them not to vote if they thought they were not legal voters.

Q. How long had you known General Washburn?—A. Seven or eight months; was ordinarily friendly to him. He always treats me respectfully, and I also treat him so.

Q. Did you go to Morton to get him to use his influence with the men to vote for Mr. Washburn for Congress at said election?—A. No, sir; I did not. I was on no more intimate terms with Morton than I was with the other men.

Q. Do you know of your own knowledge of any money paid or promised to be paid, reward offered or promised, or any valuable consideration whatever given or promised by Wm. D. Washburn, or any person or persons acting for him with his knowledge, to any person or persons in order to influence such person or persons to vote for or use his or their influence to cause other persons to vote for Wm. D. Washburn at the late election held November 5, 1878?—A. *No, sir.*

Recross-examination:

Q. Did you say anything to Morton about this money transaction that has been talked about?—A. Never, to the best of my memory.

Redirect:

Q. Did Webster tell Morton in your presence that Webster and White would make more money looking after the election than they would at cutting wood, or words to that effect?—A. I think not, sir; I don't know what he told Morton, but he did not say it in my presence. I never told Morton any such thing.

The testimony does not show that Webster and White paid these wood-choppers for their time under any arrangement with Washburn or any of his friends. The most that can be said is that one George B. Webster, a relative of the Webster of the firm of Webster & White (p. 296), consented *after the election* to reimburse Webster for the money he had paid these men for their time on election day while attending the polls and voting.

He only adopted the act after the election by giving his individual check for the sum paid (p. 307). If Mr. Washburn had himself done this (which he did not) he would not have been guilty of bribery, even though it could be said the men were bribed to vote for him.

The testimony does not show, as has been claimed, that money was paid from the funds of the Minneapolis and Saint Louis Railroad Company; nor does it show who, if any person, reimbursed George B. Webster. The most that can be said is that G. B. Webster may have paid this money from a campaign fund raised by the district committee. We are not called on to approve of the act of Webster and White in promising and subsequently paying these wood-choppers for their time on election day while they were not at work. The policy of such an act is strongly condemned, although it is often adopted. As in this case, the voters who are laboring men often demand to be paid for their time regardless of their politics.

Some significance is given to the fact that in Tamarack precinct Donnelly only received one vote. It was not the only precinct where the voters about all voted one way. Mr. Donnelly claims to have received all the votes, 61, cast in Leaf Valley precinct, Douglas County (p. 270), and a portion of the committee (although no return was made of these votes) has agreed to count them for him. For other precincts where the vote was almost unanimously for Donnelly, see pp. 260 and 261 of record. Had the voters in Tamarack precinct been bribed to vote for Washburn that fact could certainly have been proved by competent testimony.

As the rejection of the entire vote of this precinct cannot affect the result in this case, it is not thought necessary to do anything more than consider the testimony with reference to the contestee's complicity with any alleged bribery. It is not necessary to invoke the application of the rule that *bribery must be proved, not presumed*, to completely exonerate him from such a charge in this as well as all other alleged cases.

The witness Emil Shagren is relied upon very much to prove bribery in this case. It does appear from the testimony of Emil Shagren that one Mr. Hale, a friend of Mr. Washburn, had one or two interviews with this witness, during which he tried to persuade him to support Mr. Washburn. But this witness, when in need of money, received five dollars from Mr. Hale, according to his own confession, and afterwards supported Mr. Donnelly. This money, if paid to him at all, was on account of expenses that Mr. Shagren would be required to incur while engaged in using his influence with his friends for the election of Mr. Washburn. In the course of the alleged conversation with Mr. Hale it is claimed that Hale proposed to bribe Mr. Shagren and induce him to turn from his support of Mr. Donnelly to the support of Mr. Washburn. But a careful reading of the testimony will show that this even is not true. Shagren says in his testimony (p. 15) that Mr. Hale said to him, "Is it greenbacks you want? I am told you are a delegate to the Greenback convention, and that you are a Donnelly man." A further reading of the testimony will show that Mr. Hale could have referred, when he used this language, to nothing more than the politics of the witness. Mr. Donnelly was running as a Greenback candidate. Aside from the fact that Shagren confesses that he was willing to be bribed to support one man while he treacherously supported another, this witness is shown to be entirely unworthy of credit. He is directly impeached by at least three witnesses called by the contestant. He testifies (pp. 16 and 17) positively that Ole Mahler told him at Harmonia Hall that he could get twenty-five dollars to vote for Washburn and to use his influence for him; that Sevit Mahler told him he was paid to vote for Washburn; that John Oleson told him he got two dollars to vote for Washburn and to use his influence for him; and that Daniel Getchel had received money to vote for Washburn. Ole Mahler was called by contestant as a witness, and swears (pp. 116–119) that he was a supporter of Donnelly, and also that he never stated to Emil Shagren that he had been paid money, or other valuable consideration, for his vote; that he attended the polls to look after the interests of some of his friends, candidates for county offices, and that he did not ask anybody at the polls to vote for Washburn. Ole Mahler says in his testimony (p. 119):

> I have read a piece in the Pioneer Press, giving the statement of Mr. Shagren of my meeting him at Harmonia Hall the eleventh day of November last, and that I told him that I had $25 from Washburn. I deny every word of it. I was not at Harmonia Hall.

John C. Oleson directly impeaches Shagren in the most positive terms. On this point his testimony is given in full (p. 87):

Q. Do you know Emil Shagren?—A. Yes, sir.

Q. Please state if you had a conversation with Emil Shagren at Morrison Brothers' lumber-yard, or at any other place, on or about November 7 last, and stated to Shagren that you had received money to cast your vote for Mr. Washburn at the last Congressional election.

(Objected to as irrelevant and immaterial, and as not addressed to any specific charge in the notice of contest.)

A. I never had anything to do with Mr. Shagren about election matters, and I had no such conversation with him.

Q. Did you not state to Mr. Shagren that Chase paid you two dollars to vote for Washburn?—A. I did not.

Q. Now, please state whether you were paid any money by any one in consideration that you cast your vote for Mr. Washburn and use your influence in his behalf at the last election.—A. I was never promised any money from any party; I was never paid any money by any one.

Q. Did you not go to Mr. Chase after election and ask him for more money, stating that you had not received as much as the rest of the boys?—A. I did not.

Q. Did you not state to Emil Shagren that you had demanded more money of Chase, and that Chase had answered that if he paid you any more that he would have to pay it out of his own pocket?—A. No, sir; I never had any conversation with Mr. Shagren about it.

Daniel Getchel also directly impeaches the witness Shagren (pp. 86–87):

Q. How long have you belonged to that party (Democratic)?—A. Since the election of Mr. Tilden.

Q. Do you know Mr. Emil Shagren?—A. Yes.

Q. Please state whether at any time you stated to Emil Shagren that you had received money from any party or parties for your vote at this last Congressional election, or for your influence or services, from any party.—A. I did not make any such statements to Mr. Shagren.

Q. What did you state?—A. I object, and decline to answer.

Q. Please state whether you have received any money from any party at this last Congressional election—from any party for your vote, or services, or influence.—A. I decline to answer that question.

Q. Will you state whether you have received any money from W. D. Washburn, or from any party acting in his behalf, with the understanding and agreement that you should cast your vote for W. D. Washburn for Congress?—A. I received no money from Mr. Washburn, nor from any of his friends, direct or indirectly. That Mr. Washburn, nor any of his friends, never approached me nor came to me to ask me to vote for him or use my influence, and I would not have voted for him if he had. I voted for Mr. Donnelly and used all my influence for him.

Q. Please state whether or not you did say to Shagren that you was paid to vote for Washburn, and that you had voted for Washburn.—A. I did not state any such a thing.

Q. Please state whether you know of any other parties who have received money to vote for Mr. Washburn.—A. I do not know. I have no knowledge whatever.

Cross-examination:

Q. Do you know of any voters receiving any money, promise of office, or other reward for voting for Mr. Donnelly at the last election for member of Congress?—A. I have no knowledge of anything of the kind, sir.

It is thus made to appear by three witnesses that Shagren is a willful perjurer. It is proper to observe here that with the exception of the witnesses Mahler, Olesen, and Getchel, whose testimony is referred to above, the contestant has failed to call persons who would know the facts in relation to the alleged bribery, but he has generally relied upon getting persons who had their pretended information second or third hand, and in most instances were persons whose testimony was of a very doubtful character, and who had some grievance.

The testimony of Bernard Cloutier (pp. 211–213) is relied upon to prove his bribery. It appears from this witness's testimony that he was in the market as a worker at the polls, and was somewhat disgusted because in the past he claimed to have been promised a good deal of

money for his work, but had never got anything for it. He, however, states that he did receive from one Charles W. Johnson, who was in some way connected with the Republican district committee, some money for his influence and work. He says he was to go out in the country and electioneer for Washburn and the rest of the Republican ticket. He also says he was induced to do some work for one John Baxter, who was a candidate for the legislature. He further says: "I wanted him to give me money enough to pay my expenses, to furnish a team, and pay for my team. He told me all right; to go and hunt up a team and start out the next morning." And he distinctly says that he told Baxter that Washburn was his candidate, and this before he was employed to do any work in the election for any candidate. The following is an extract from his testimony:

> Mr. Johnson, as I understood, was secretary of the Republican district committee. I think I have given all of the conversation between Johnson and myself, or Washburn and myself, in reference to my services in that campaign. There was no money or other consideration offered to me or received by me for my vote for Mr. Washburn or anybody else.
>
> My choice as between Mr. Washburn and Mr. Donnelly prior to any negotiations for my services was for Mr. Washburn. I knew Mr. Washburn, and did not know Mr. Donnelly. I was not authorized or requested to use any part of this money to secure votes for Mr. Washburn in any way, except to pay my expenses and time. I do not know of any money or other valuable thing being paid, or any promises made by Mr. Washburn or any person in his behalf, to any voter to influence his vote in his favor at said election.

The report of a portion of the committee, in two places finds by the testimony of this witness alone that he was paid $20 by Charles W. Johnson in Mr. Washburn's office, *in his presence*. We are content to say that there is not a syllable of evidence in the entire record which even tends to prove that this is true. On the contrary, the witness Cloutier, in express terms, states (p. 212) that it was paid to him by Johnson in the absence of Mr. Washburn. There is nothing in his testimony which tends in any sense to show an attempt to bribe him, or to employ him to bribe others, to vote for Mr. Washburn.

Members of the committee, having referred to the testimony of Charles Berens, George C. Morton, Emil Shagren, and Bernard Cloutier, then proceed to lay down the proposition that, as a matter of law, Mr. Washburn must be held to have been guilty of bribery because he failed to rebut their testimony, regardless of the fact that when the testimony is examined it does not show Mr. Washburn to have himself, or through any authorized agent, paid or promised a single cent of money to any person. There is no rule of law which requires a party charged with an offense which is not proved, to himself enter upon a defense; nor is it true that, in the trial of a case where a crime is charged, any presumption arises against the party charged because he does not prove himself innocent, or merely because he is charged with the offense. The rule of law is universal, that a man must be proved to be guilty by competent evidence upon the trial. There can be no presumptions against the party charged simply because he furnishes no evidence on the trial. The exigencies of the contestant's case may be the excuse for undertaking to enunciate any such anomalous and absurd proposition of law. The astonishment is that the proposition should find supporters in the committee.

It is claimed that in Crookston precinct, in Polk County, there were a large number of illegal votes cast by parties that worked upon the construction of a railroad who were not inhabitants of that precinct and had no right to vote there. This claim is chiefly based upon the alleged

fact that the vote of this precinct was too large. The whole vote of the precinct was 258 as returned. The county of Polk lies on the Red River of the North, and extends along it for over sixty miles, and Red Lake River passes directly through it in an east and west direction. The Saint Paul, Minneapolis and Manitoba Railroad passes through its entire length, north and south, over sixty miles. Crookston is its chief city, being at the crossing of the railroad with Red Lake River. Now, it must be borne in mind that a residence may be acquired in a county in ten days for the purpose of an election, provided the voter has resided in the State long enough to become a resident and naturalized citizen. That county, for a year or more previous to the fall election of 1878, swarmed with immigrants and land hunters. At the governor's election in 1877 there was polled in that county 257 votes, of which 238 were for Pillsbury, Republican, and 19 for Banning, Democrat. From 1877 to 1878 there was an increase of voters in that county much less than might have been anticipated. The contestant does not attack any precinct of Polk County except Crookston, and upon this point he swears four witnesses—Johnson (p. 190), Sampson (p. 232), Myer (p. 238), and Church (p. 223). It is impossible to give a detailed analysis of the testimony of these witnesses in a report.

Johnson's testimony shows that every voter of whom he speaks had a clear right to vote. He speaks of a number of persons as "Thompson's crew," but he said that they had all been in the district two or three weeks or a month before the election. Some were old settlers and some had been there several years, others for only two or three months. On cross-examination this witness shows that he knows very little about the matter, except what he has been told by others, chiefly since the election.

The witness Sampson undertakes to give a census of Crookston, but before he gets through it clearly appears that he knows little about the total number of voters in the precinct. After this witness has given a census, as far as he can, of the resident voters of Crookston, he says:

> There are two or three shanties in the village, but I do not know the people. I could not swear but there might be a few more; could not be many, as I am well acquainted there. If there are more I have not seen them; they may be out in one corner, but I have not seen the houses. I forgot to state that Hitchcock & Brother runs some big farms on the northern part of the township. I could not state whether they were voters or not.

He further says:

> I know the farmers, and I know the country. I do not know the steamboat men, the men who are coming and going.

And on the question as to whether any illegal votes were polled, when asked the question, "Did you see any railroad workingmen vote at that poll at that time?" he says: "No; I was not up at the house." He does say that a minister of the gospel who preached in another town voted in Crookston. To show the utter unreliability of the witness Sampson, an extract from his testimony is here given. The only apology for giving this is found in the fact that some of the committee lay great stress upon this witness's knowledge of the voters of Crookston precinct, and rely upon it to conclusively show that there was a large number of illegal votes cast at the election in 1878:

> Q. Who came into this county in the month of August last as settlers?—A. I never stated that I knew all the farmers in the county; I know the most of them.
>
> Q. Who came into the township of Fisher during the months of August, September, and October 26, 1878?—A. That is one thing I have kept no record of. No, I keep no record.
>
> Q. Who came into the village of Crookston during the months of August, September, and up to October 26, 1878, to make this their home?—A. I have kept no record; some of those I named came during that time. I know that a saloon-keeper down at Box's place, he began last fall pretty lat[illegible]macher and his partner started

late last fall. I know Kretzsetmar started some time in August some time. That harness man, he put his shop up in the middle of the summer; also Colter builded last summer.

Q. Do you swear that you stated the names of all the male adult residents of the village of Crookston who resided there more than ten days before November 5, 1878?—A. No, I do not. I told you that there might be a few more.

Q. How many boarders had Mr. Box of male persons over 21 years of age who had resided in the village of Crookston more than ten days prior to the election, whose names you have not stated?—A. I could not say that.

Q. May he not have had quite a number?—A. For all I know; I keep no record.

Q. How many men over 21 years of age who had resided in the village of Crookston more than ten days prior to the election held November 5, 1878, boarding at the Sherman House, whose names you have not stated?—A. That is one thing no man could state. There were people coming and going every day.

Q. May there not have been quite a large number?—A. May have been a good many.

Q. Were there not quite a number of private boarding houses in the village of Crookston during the fall of 1878, and at and prior to the election held November 5, 1878?—A. There was some people stopping, coming and going. Some regular boarders, I should think, at these private boarding-houses.

Q. Were there not men of the age of 21 years who had resided in the village of Crookston more than ten days prior to the election held November 5, 1878, whose names you have not stated, who were boarding at those private boarding-houses at that time?—A. I don't know if there were, and couldn't say if there was any—people coming and going. The boarding-houses were full sometimes.

Q. May there not have been quite a large number of such men, whose names you have not given?—A. I can't state that.

Q. Were there not quite a large number of single men in this locality of the age of 21 years who had resided in the village or township of Crookston more than ten days prior to the election held November 5, 1878?—A. I could not state that. There may have been.

Q. How many children are there in the public school in the village of Crookston?—A. What I have learned from the Crookston paper and School Superintendent Stevenson, 120 scholars. The district includes four towns. I know there are children there from other townships.

Myers's testimony has reference only to a conversation with one W. B. Moore, whom he imagined was an illegal voter, and whom he stated told him he was not a naturalized citizen. On this he founded a theory in his own mind that fraud had been committed. This witness started on the mission of finding out whether Mr. Moore was a naturalized citizen or not, and succeeded in finding the record, which satisfied him that he was. This is an illustration of the unreliability of loose statements made by persons after an election. They are often made merely to badger and annoy and excite the curiosity of some over-officious man, such as doubtless Myers and other of the witnesses called in this case were. The other witness, Church, recites some conversations, and undertakes to give some conclusions about the number of legal voters in Crookston precinct, but when he is fully examined he makes clear two things only: 1st. That he has no good data upon which to base any of his statements; 2d. That he was a disappointed candidate for sheriff at that election, who tried very hard to induce all these voters, whom he now claims were illegal voters, to vote for him, but failed.

Members of the committee, however, hold that many persons who voted in Polk County ought to be regarded as illegal voters because they worked on a railroad fourteen miles from the voting precinct, and not because they resided outside of it; and for the further reason that the railroad company for whom they worked transported them to the polling place in a railroad car.

It is proper to observe here, again, that during the short time a portion of these voters were going to and returning from their voting place their employers paid them for their time; and it may be observed, also, that in some of the newly constituted voting places, ballot-boxes, such as were required by the letter of the law, were not provided. An im-

provised candle box was used at one place, and a cigar box at another. But there is no law which requires the rejection of the votes cast in such receptacles, in the absence of a whisper, or pretense of proof, that the contents of the boxes were tampered with. No such charge is made by the contestant, in his notice, with reference to any of the precincts in the Congressional district, and there is no proof to sustain any such claim. Experienced persons on the frontier know that people there have to put up with what they can get. But the contestant desires to disfranchise a large number of these hardy pioneers because of their poverty and their inability to provide themselves with the usual and ordinary facilities for exercising the elective franchise.

It is not proposed only in a few instances to review the cases where it is alleged that individuals were bribed by Mr. Washburn or his friends. We have sufficiently shown that Mr. Washburn, personally, had nothing to do with bribing any voter, nor did he authorize any person to bribe voters for him. It may be admitted that some persons were employed by members of the Republican party, and by friends of Mr. Washburn, to work at the polls and to induce the voters to turn out on election day. Certain members of the committee claim that about 22 persons were bribed to vote for Mr. Washburn. The testimony does not disclose in but few cases who these 22 persons voted for, or that they voted at all.

Oluf Larson is the first one. He resided in the city of St. Paul. He says in his own testimony, in express terms, that he did not receive any money or other valuable consideration for the purpose of securing his vote or his influence at the polls on behalf of Washburn at that election. He does say that he was paid ten dollars to peddle tickets for Mr. Washburn and for his time while doing so. He expressly states that he was not requested to use his influence for Mr. Washburn, and he also states that he used no part of this money to bribe any one to get votes for anybody. He further says that he was a Republican, and voted for Washburn. (p. 28.)

Abraham Werrick, another one of the alleged bribed voters, makes clear by his testimony that he was a supporter of Washburn, and that he received no money to vote for him. (p. 29.)

William M. Leyde, another alleged bribed voter, says he took part in the general campaign in behalf of the Republican ticket; that he supported Washburn; and that he received no money from Mr. Washburn for anything he did. It is true this witness says he received money to canvass a portion of his county. This witness was a Republican. (p. 489.)

C. Heyer, another alleged bribed voter for Washburn, did do some work in the general canvass, but he was not engaged to participate specially in the election until after he had declared, in most emphatic terms, when asked whether he would vote for Donnelly, that he would not, and that he would not vote for a Greenback man; and, also, that he would support Mr. Washburn against Mr. Donnelly. In the work that this man did he says he simply peddled tickets, and that he did not request or persuade any one to vote for Mr. Washburn. (p. 55.) This person also received five dollars from a man by the name of Castle, a Democratic candidate for senator, for work on election day. (pp. 56–57.)

It is charged that John C. Oleson was also bribed. This charge rests upon the testimony of Emil Shagren, already shown to be directly impeached and to be unworthy of credit by at least three witnesses. Oleson, himself, says in most emphatic terms that he was never promised any *money* from any party, and was never paid any money by any one to *take* part in the election (pp. 87–92).

A man by the name of Shack is also alleged to have been bribed to vote for Washburn. This allegation rests upon the testimony of the witness Rogers, which is wholly and entirely hearsay. Shack was not called. Rogers does not undertake to give the language of Mr. Shack, but only arrives at a conclusion that Mr. Shack, an editor of a paper in Minneapolis, turned from the support of Mr. Donnelly to that of Mr. Washburn, because the Democrats had never helped him in his newspaper enterprise (p. 89). Shack in the public prints denies the whole of Rogers's testimony.

Karl Findler is claimed to have been bribed. An examination of the testimony relating to his alleged bribery furnishes us a key to a vast amount of the absurd claims made in this case. A witness, Guertin, undertakes to state that this man Findler sold his vote for a sack of flour. It turns out that Guertin was one of those unsophisticated but would-be knowing men who nosed about and was rewarded by being made a fool of by all sorts of people, who imposed on his credulity by telling stories which they thought were suitable to his fancy. Guertin does say (page 95) that Findler made a passive admission that he had obtained a sack of flour from Mr. Washburn's mill to vote for him. This witness says that he had a talk with Findler, who was a German and spoke the English language imperfectly, in the presence of a man by the name of Martin Graham. He says the conversation started between Findler and Graham, and in a joke; that Mr. Findler's reply to a question of Graham's "was child-like and innocent, without evasion" (page 95). This man Graham also testifies in this case that Karl Findler said something to him about "a hundred of flour," and then he says that he knows himself that this conversation that Mr. Guertin heard was all a joke, and he further knows the fact that Findler made a statement about the flour just to aggravate Guertin and see him blow about it, and that in fact Mr. Findler got no flour. The following is a portion of Graham's testimony:

Q. Will you state now whether, from the character of the conversation and the man's manners when he said that he got the hundred of flour for voting, you thought he was in earnest?—A. I did not.

Q. Was it in a joking conversation?—A. I believe it was.

Q. Do you and that man work together, and are you on friendly terms?—A. We have worked together for a month past, and we are friends. I have voted for Mr. Donnelly. Mr. Guertin was present and standing by at the time that Karl Findler made the statement about the flour.

Q. Do you consider it a joking matter to have a man confess bribery?—A. He just said it to aggravate Guertin, because he knew that Guertin would blow about it, and I know that he never got a grain of flour.

Q. How do you know that he never got any of that flour?—A. I am certain of it.

Q. How are you certain that he did not get it?—A. Because I know that he did not get it.

Sevit Mahla, of Minneapolis, is mentioned as another of the bribed voters. The only testimony to support this mention is that of the witness Emil Shagren, on the character of which we need make no further comment (p. 16).

Louis Kundsen is said to have been bribed, or to have received $5 to work all day at the polls, but this money was not received from Mr. Washburn, but from his employers, Bernard & Cope, who paid it to him as wages. He was not required to work specially at the polls for Mr. Washburn, but simply to peddle tickets (pp. 162–3).

Mr. Bernard, who paid Kundsen, said nothing to him about working for any particular man on the ticket (p. 163–4). The witness said he did not try to influence any man's vote at that election (p. 164). This man Kundsen in his testimony expressly says that he would have voted

for Mr. Washburn if he had not been employed at the polls. His testimony also explodes much of the theory of contestant on the subject of bribed voters, notwithstanding the fact that several persons were employed to work at the polls on election day. Here is an extract from his testimony (p. 163):

Q. Do you mean to say that you sold your vote at the election of November 5, 1878?—A. No.
Q. Would you have voted just as you did without being paid for it?—A. Yes, sir.
Q. Do you know of any money having been paid for votes before or at the November election, 1878, by Mr. Washburn or any person acting for him with his knowledge or consent?—A. No.
Q. Do you know of any promise having been made or reward offered to any person for his vote by Mr. Washburn or any person authorized by him?—A. No.
Q. Do you know of any vote having been cast for Mr. Washburn at the election November 5, 1878, which was paid for by Mr. Washburn or any person authorized by him?—A. No.

Louis Paulson is said to have been bribed to vote for Mr. Washburn. The testimony does not support this claim in any degree. There is some highly unsatisfactory testimony offered to show this man was paid $5 (not by contestee or by his agent or special friends) to peddle tickets at the polls (p. 164).

All that has been said in relation to Louis Kundsen will apply to Louis Paulson (pp. 161–4).

W. R. Metcalf, alleged to have been bribed to vote for the sitting member, makes very clear by his testimony that he was not engaged before or on election day in the interest of either Washburn or Donnelly, and that he did not do any work in the interest of Mr. Washburn. He did handle tickets, but for other candidates. He was not a partisan of either Washburn or Donnelly; neither of them was his choice. He was a Republican and was employed by certain candidates who were running for State and county offices. He was employed to get out the vote in his precinct by providing means of transportation for voters who had no teams (pp. 183–5).

Peter Quady it is pretended was bribed in Washburn's interest. This the witness expressly denies, and says that he did not "receive any money between Washburn and Donnelly" (p. 201). He says he did not urge any person to vote for Washburn for Congress. The witness Quady declined to state who paid him money to work at the polls, but he repudiates the charge that he received any money, or promise of money, "between Donnelly and Washburn" from anybody.

Louis N. Gayner, said to have been bribed by Washburn, or his friends, also says that he received no money for his vote, influence, or services, at or before the election, from Mr. Washburn, or any person acting for him or in his behalf. He declines, when on the witness stand, to state for whom he voted. He does say on cross-examination that his opinion was in favor of Washburn, but that the interest he took in the election was not on his account, but on account of some other person (pp. 206–7).

Peter Engberg, who was alleged to have been bribed, says, also, that he was employed for some of the local candidates, but that he took no interest in the election of Washburn further than the majority of voters in Minneapolis. He expressly says that he received no money from Mr. Washburn, Major Hale, or Charles W. Johnson. He also says that he had no financial or private interest in the election of Washburn; that he was promised nothing and offered nothing for his services, influence, or anything connected with Washburn's election; and he further says that he knows of no vote, or services, or influence for Mr. Washburn

that was secured by him, or any person for him, by the payment or promise of any money, or other valuable thing. He testifies that he was employed to do nothing in connection with the election, except to get out a full vote in favor of the Republican ticket (pp. 207–209).

Bernard Cloutier (pp. 211–213), who is one of the persons supposed to have been bribed, says, in his testimony, he received some money from Charles W. Johnson for his influence and work at two different times, and that he was to go out in the country and electioneer for Washburn and the rest of the Republican ticket. This service he performed. And then he says:

> There was no money or other consideration offered to me or received by me for my vote for Mr. Washburn or anybody else. My choice as between Mr. Donnelly and Mr. Washburn prior to any negotiations for my services was for Mr. Washburn. I knew Mr. Washburn, and did not know Mr. Donnelly. I was not authorized or requested to use any part of this money to secure votes for Mr. Washburn in any way, except to pay my expenses and time. I do not know of any money or valuable thing being paid, or any promises made by Mr. Washburn, or any person in his behalf, to any voter to influence his vote in his favor at said election (p. 213).

Tollef G. Fladeland, said to have been bribed, admits in his testimony that he received money to go to North Fork and Crow Lake Townships to see some parties who had not been seen, and leave some tickets. He says, using his own language: "I was a Washburn man in politics at the time Searle and Cooper called on me." He had formerly been a Democrat, he says, but not recently. The contestant here turned aside from his contest and desired this Scandinavian to settle the question which recently agitated the whole country, to wit: Who was elected President of the United States, Hayes or Tilden? The witness was in doubt, and refused to swear that either Hayes or Tilden was elected. (pp. 221–22.) The testimony of Cooper shows Mr. Fladeland received money to pay his livery bill, &c., from Searle and Cooper, which was never repaid or expected to be repaid to them. (pp. 256–7.)

J. V. Brower, a lawyer residing at St. Cloud, Minnesota, and registrar of the United States land-office at that place, is claimed to have been bribed to vote for Washburn. He is one of the twenty-two whose names are given in a list of bribed voters. His testimony discloses the fact that he was a Republican and a warm supporter of Mr. Washburn. He paid for some cigars in his electioneering for Washburn. It does not appear that this man Brower ever received any money, himself, for his services. (pp. 244, &c.)

The claim that A. J. Clark was bribed needs little or no comment.

He is claimed to have been bribed to vote for Washburn. It does not appear for whom he voted, or even that he voted at all for Congressman in 1878. The same may be said of others of the alleged bribed voters.

The testimony of one Nathan Richardson is relied on to prove Clark's bribery. (pp. 285–9.) No money is shown to have been paid him at all, and no agreement to pay him money is shown to have been made. (p. 286.) Richardson, on the contrary, says no money was paid any person by Washburn or his agent to influence votes.

Here is an abstract from his testimony:

> Question. Do you, of your own knowledge, know of any money paid or promised, any reward offered or promised, or any valuable consideration whatever given or promised by William D. Washburn or his agents or any person or persons acting for him, with his consent or knowledge, to any person or persons in the third Congressional district of the State of Minnesota for his or their votes or influence for William D. Washburn for member of Congress at the last general election, held November 5, 1878?—Answer. No, sir; I have no knowledge of any money being paid or any reward

offered or any valuable consideration given or promised to any person or persons for their vote or influence for W. D. Washburn.

Q. Do you know of your own knowledge of any money being used at said election by William D. Washburn or his agents with his consent, or under his direction, to induce voters to corruptly vote for William D. Washburn at said election held November 5, 1878, who would otherwise have voted for Ignatius Donnelly?—A. Not that I know of. I do not know of anybody using money for any such purposes.

The letter referred to in the testimony, by Richardson, was never sent or intended to be sent by him to any person. He says of that letter (p. 290):

Q. Did you send the letter offered in evidence, and marked Exhibit A, E. D. L., to Mr. L. Fletcher, of Minneapolis?—A. No; I did not send it to him or anybody else.

Redirect examination:

Q. Was that letter lost by you before it was mailed?—A. I think I never intended to mail it; it was not lost before it was mailed; it was not mailed by me; I don't know that it was by anybody.

The letter itself (p. 285) does not refer to the matter of bribing voters or to bribery in any form; it only speaks of money to be used in aiding Clark to publish his paper, in which he was already opposing Donnelly.

Mr. Buss, of Long Prairie, is alleged to have been bribed to vote for Washburn. In the light of the evidence this charge descends to the rediculous. One Milo Porter testifies that Buss was a Republican, the treasurer of Todd County, and an ardent supporter of Washburn throughout (p. 293). He also says Buss, in a public place and in the presence of a number of persons, offered him $50 to support Washburn (p. 293). The whole talk between Buss and Porter was of such a character as to make it clear that Buss was only joking with and badgering Porter for the purpose of hearing him talk while in a heated political discussion.

Porter swears he put a card in a paper about the matter, which was false (p. 295). He also admits that he had entered the list as the "*champion liar*" of his locality (p. 295). He admits that he was a great joker himself (p. 295), and he then answers the following question:

Q. Do you know of your own knowledge of any money being paid or reward given by W. D. Washburn, or any person acting for him with his knowledge and consent, to any person or persons for their vote or influence at the last election of November 5, 1878, or the campaign just preceding such election?—A. I know of none.

On such testimony as this of Porter's the committee is asked to find that men were bribed to vote for the contestee.

A man by the name of Kitowski is said to have been bribed in Washburn's interest, and this is claimed on the testimony of the witness Brower. It may be true that Kitowski received some money for cigars and other expenses incurred at his place in the interest of Washburn. But there is nothing in the testimony that indicates that he was paid anything to support Mr. Washburn. (pp. 245–6, 253.) Kitowski is not called as a witness, but the witness Armstrong, in his testimony, states that Kitowski denied ever having received a cent of money. (p. 304.)

Henry Armstrong, the last of the list of alleged bribed voters, says in his testimony that he was not a supporter of Mr. Donnelly, and had made up his mind to vote for Mr. Washburn before any negotiations were entered into with him in relation to supporting Mr. Washburn. He does admit that he received money to see if certain men would go to the polls, and if necessary to go with his team and get them. He testifies that he used the money received by him to pay for his team and for his work. He did his work before election, and he was a mild *kind* of worker; when he went to a voter, he says he did not argue in

favor of Mr. Washburn, but simply gave him a ticket and he could vote as he pleased. (p. 303.)

We think we have pursued this question of bribery of voters far enough.

EFFECT OF BRIBERY WHEN PROVED.

As it is not claimed even by the contestant that enough bribed votes were cast to change the result of the election in the district unless all numbered ballots (2,282) cast for contestee are rejected because they were numbered, and unless the entire vote (538) cast for him in Isanti County, and the total vote (832) given for him in Polk and Kitson Counties are thrown out on account of alleged defective returns, it would seem to be unnecessary to go into the question of bribery save for the purpose of vindicating the sitting member.

As it is very clear, and it will be admitted that the polls can be purged of all the alleged bribed votes, or the entire vote of certain voting precincts wherein the alleged bribery occurred can be thrown out without affecting Mr. Washburn's majority, the rule contended for and quoted by the author of the majority report of the committee (p. 16) taken from the minority report in Platt *vs.* Goode (Con. Elec. Cases, 1871–'76, p. 650) would still give Mr. Washburn his seat.

The English cases cited from Cush. Par. Law (p. 70, sec. 189, and p. 68, sec. 181) do not go to the extent, as we apprehend, of holding that the whole election in a district where there are several voting places is void because of the bribery at one of those places of an insufficient number of votes to affect the result, but they do go to the extent of holding that an election in a particular voting place may be declared void.

The rule undoubtedly is in this country that where bribery, fraud, or intimidation is so interwoven with the vote of any voting-precinct that it cannot be eliminated from the aggregate vote cast with certainty, the whole vote of the precinct may, and perhaps should, be rejected. The unassailed votes in other voting places would, however, still stand. Fraud or bribery does not vitiate what it does not impregnate.

If bribery were proved (as it is not) and brought home to the contestee, we should not draw any fine legal distinctions to save him his seat.

The American cases cited in contestant's brief (Abbott *vs.* Frost, Con. Elec. 1871–'7[illegible], p. 594, and Platt *vs.* Goode, *supra*) are all to the effect that before a member can be unseated by reason of his own bribery of voters it must appear that his majority was obtained by such means.

To find that a candidate received an untainted majority of the votes cast, and on that find that he was not elected for the reason that other votes were rejected on account of bribery or other cause, would be a bold absurdity. In a contested election case in either branch of the Congress of the United States the sole question is one of fact in the light of the law, viz: Who of the parties to the case was elected, if either? The question in no possible case can involve the fitness of the sitting member to hold his seat. In England, where there is no written constitution on the subject of expelling a member, it may be found that the practice has grown up of inquiring into the whole conduct of a member in the course of a contestation; and if he is found unworthy, or rather ineligible, to hold his seat from any good cause, he may be unseated or kept out of a seat, notwithstanding he may have received a clear majority of the honest votes cast in the election. This, under some circumstances, would only be another mode of expulsion.

Our Constitution provides the mode, and it is the only one pointed out, for purging *the House* of a member who, for crime or other cause,

is unfit or unworthy to hold his seat. The Constitution provides that the House may "*with the concurrence of two-thirds expel a member.*" (Con., Art. I, sec. 5, par. 2.)

Bribery or other crime committed by a member, and which did not affect or influence the result of his election, could in no sense be construed to render his *election void.* Such has been the holding in several of the States. (3 Watts & Serg., 338; Brightley's Elec. Cases, 134; McCrary on Elec., sec. 229.) Cushing, in his work on elections, questions the application of the English rule in this country, in relation to the effect of bribery by the candidate or his agent in an election, on the right or power to declare an election void (sec. 190 . An examination of the English rule as stated by Cushing in his work on elections will make it clear that the principle the Parliament proceeds on in declaring an election void is, not that the sitting member was not duly elected, but that by his evil conduct he has rendered himself unworthy of being elected and of holding a seat in the British Parliament. The election of a member under such circumstances is declared void as a punishment to the member and as a mode of condemning evil practices, and also to preserve the purity and freedom of elections in that country generally. (Cush., p. 70, secs. 189, 190, 191.)

Most, if not all, of the English cases put the rule on the ground that bribery works a disqualification of the member to be elected to and to occupy a seat in the body to which he was elected. The basis of the English rule which allows in a contested-election case arising over the election of a member of the House of Commons a finding, where it is proved that the person actually receiving the highest number of votes was guilty by himself or his agent of bribing only a portion of his majority, that he was not elected, must be kept in view to enable a clear distinction to be drawn between the rule which obtains in England and the true rule in the American Congress.

At common law, bribery at elections of members of Parliament was a crime. (Rex *vs.* Pitt, 3 Burrows, 1335, &c.; 1 Russell on Crimes, 155.) The punishment at common law for such bribery was found inadequate, and hence the passage of the statute known as "*The treating act,*" of 7 W. III, chap. 4 (1695), which provided that if any candidate, after the issuing of the writ for an election, should give or promise any money or entertainment to any elector *he should be incapable* to serve for that place in Parliament—that is, upon that election. The punishment provided by this act was fixed to remedy the defects of the common law, which, while it punished bribery, &c., in elections, provided no *disqualification* to hold an office, and such had been the holding of courts and legislative bodies.

It appears from good authority—Jacobs (author of the Law Dictionary), who, after citing statutes, 2 Geo. II, c. 24 (1731), 9 Geo. II, c. 38; and 16 Geo. III, c. 11, which attached some penalties to election bribery in the shape of fines, says: "But these statutes do not *create any incapacity of sitting in the House.* That depends *solely* upon the *treating act* above mentioned," referring to the act of 7 W. III, c. 4. (See Jacobs's Law Dictionary, title Parliament, VI (B3), vol. 5, p. 76. Ed. 1813. See Russell on Crimes, 155, 159*a*. Ed. 1845.)

The act of 5 and 6 Vict., c. 102, extends the treating act of W. III, and makes it include the acts of the agents of the candidate as well as of himself, and makes such acts, whether of himself or of his agents, "directly or indirectly," sufficient *to disqualify.* The agent is a well-known and recognized element in British parliamentary elections, of which we know nothing in this country. The candidate selects him in that coun-

try, and hence there is no hardship in holding the principal responsible for his acts, otherwise all amenability for criminal conduct at elections there would be avoided.

There are other English statutes upon the subject of treating, &c., at elections, and making candidates responsible for the action of their agents as well as their own acts, which must be kept in mind in reading Rogers, Douglas, and other English authorities whose comments are upon cases, governed by these statutes, which are not authority for us.

That bribery by a candidate for an elective office (in the absence of a statute making it a disqualification) does not *disqualify* to hold the office at the common law was held by the Court of Queen's Bench in Regina *vs.* Thwaits, 18 Eng. Law and Eq. Reports, 219, 221, in a proceeding in the nature of a *quo warranto* to try the title to an office, where acts were shown which were by the court held to amount to *bribery*, but which did not affect votes enough to change the majority, and the respondent was therefore held entitled to retain his seat as a member of a municipal council.

The same doctrine is held in Pennsylvania as to a sheriff, in Com. *vs.* Shaver, 3 Watts and Sergeant, p. 338.

The English rule laid down by Cushing in his excellent work, without giving either the origin or reason of the rule, is calculated to mislead persons in this country.

It is quite demonstrable that the rule owes its existence to disqualifying statutes of England, and can have no application to questions arising in the Congress of the United States under our present Constitution and laws.

In the Galway election case (2 English Reports (Moak's ed.), pp. 711, 723), where it was argued that bribery, treating, and undue influence were not disqualifications at the common law, and that the act of 17 and 18 Vict., chap. 102, repealed all the earlier acts making them a disqualification, and itself only made these acts a disqualification by the 36th section, "after they had been found guilty of the acts by an election committee," the court taking a different view gave the opinion, not that the common law made these acts a disqualification, but that, to quote from the opinion of the judge announcing the decision of the court, "*The true construction of the statute itself is that the commission of any of these offenses ipso facto disqualifies the candidate from being elected, or annihilates his status as a candidate.*"

The theory of the English cases is that a candidate is for the particular election in which the candidate or his authorized agent violates the disqualifying statutes he becomes ineligible to an election. No such rule obtains under the Constitution and laws of the United States as to Representatives in Congress.

An examination of all the cases cited in Rogers, Douglas, and other English authorities, where a member of Parliament has been unseated for bribery, treating, &c., by himself or his agents, where the votes thus affected were less in number than his majority, will show that in every case the decision rests upon special English statutes with which we have nothing to do.

Bribery in procuring an office is made a disqualification for holding the office by the constitutions of the States of Massachusetts, New Hampshire, Vermont, Rhode Island, Maryland, Missouri, Arkansas, Texas, California, and Florida.

Bribed votes should undoubtedly be rejected, but unless they are numerous enough to change the majority, the candidate receiving the majority should be declared elected. (See 3 Arch. Cr. Pro., 470–570.)

It is said that in some of the States in this country where bribery in elections is made by constitutional provision a disqualification to hold an office, and bribery is proved against the candidate receiving the highest vote, the election should be declared void, even though the bribery did not affect the result (Cush., secs. 190–191).

In some of the States it is held that prior conviction of the disqualifying crime is necessary before such a rule can be applied by a legislative assembly. It is not admitted that either the organic act of a State or its legislature can prescribe disqualifications of any kind for a member of the House of Representatives of the United States, but it may be proper to state here that the constitution of Minnesota (sec. 15, art. 4) gives full power to the legislature of that State to render ineligible to hold office any person guilty of crime, and that legislature has not made bribery of voters a disqualification to hold office, but it has only made *it* a misdemeanor, punishable by fine and imprisonment in the county jail (Stat. Minn. 1878, p. 5, sec. 66).

It may be observed that under no provision of the Constitution of the United States does crime committed by a member in his election disqualify him from taking and holding his seat.

The reason for the English rule wholly fails in the case of a member of the House of Representatives.

Justice Johnson, of the Supreme Court of the United States, in an early case, in speaking of distinctions between American and English legislative bodies, said:

> American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice, under the specious appearance of merited resentment (6 Wheaton, 231).

No case has been found in this country where any such rule (in the absence of an express constitutional provision), as is claimed to exist in England, has obtained in the House of Representatives of the United States, or in any of the States of this Union, but there are a number of cases, as already appears, where the rule is entirely disregarded.

McCrary in his excellent work on "*American Law of Elections*" does not refer to or recognize any such rule, but all through his work it is taken for granted that no such rule has ever had any application to a contest in the House of Representatives of the United States.

It is true the Constitution of the United States makes "*each house the judge of the elections, returns, and qualifications of its own members*" (Art. I, sec. 5.)

In judging of the *election* of a member, the House deals alone with the question of the number of votes the member received, and if it appears that he has a majority of the votes cast, excluding all illegal and void votes cast, and a full and fair election has been held by which such majority has been obtained, or at least the majority would not have been affected by any unfairness or improper practices in the election, then the conclusion is irresistible that such member has been duly elected.

In judging of the *returns* of its members, the House deals with the formal returns, at least preliminarily, on which a member is expected to be admitted to a seat in the first instance.

In judging of the *qualifications* of a member, neither the question of *election* nor *returns* is involved. The *qualifications* of a member of the House of Representatives are fixed by the Constitution of the United States, as follows:

> No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected, be an inhabitant of that State in which he shall be chosen (Art. I, sec. 2.)

Of these prescribed qualifications the House is the exclusive and final judge.

If before a person has been sworn in and taken his seat the House were to decide that he did not possess the constitutional qualifications, he could not be admitted to a seat. Even if sworn in as a member it would probably not require an expulsion to vacate his seat if the House were to adjudge him without requisite constitutional qualifications entitled to hold a seat.

The power to expel a member is given to meet cases of members admitted to seats who would, under the Constitution, be qualified to sit, but for other than constitutional causes would be disqualified or unworthy to be a member of the legislative body in the judgment of two-thirds of the House (Art. I, sec. 5).

The Committee on Elections, under the rules of the House, have only jurisdiction to consider such petitions, &c., touching elections and returns as shall come into question. Such has been the rule of the House since November 13, 1789.

We here quote the rule adopted at that date with a slight amendment of date of November 13, 1794:

> It shall be the duty of the Committee of Elections to examine and report upon the certificates of election, or other credentials, of the members returned to serve in this House, and to take into their consideration all such petitions and other matters touching *elections and returns* as shall or may be presented or come into question and be referred to them by the House (Con., Manual and Digest (Smith), Rule 75).

Under the above rule this case was referred to the Committee on Elections.

It will be observed that under it the committee is given no power to consider questions of disqualifications of a member to hold his seat where it appears that he has been duly elected.

The new rule of the House, adopted March 2, 1880, relating to the powers of the Committee on Elections, is as follows:

> All proposed legislation shall be referred to the committees named in the preceding rule, viz: Subjects relating (1) to the election of members: to the Committee on Elections (Rule XI).

By neither the old nor the new rules, it will be seen, has the Committee on Elections any power except such as relates to the *election of members*.

The conclusion is irresistible that the committee has no right to report against a sitting member who, as in this case, two-thirds of the committee find in effect was duly elected.

NUMBERED BALLOTS.

It is claimed that in seven precincts of the city of Minneapolis the judges of election placed a number on the back of each ballot to correspond with the number of the voter on the poll-list, and that the purpose of doing this was to work a fraud upon the people, and to intimidate the voter so as to require him to cast his vote for the sitting member. The ballots were numbered in these seven precincts in exact accordance with the provision of the law of the State of Minnesota, which had been passed about eight months before the time the election was held in the fall of 1878. (See Sessions Laws of Minnesota, 1878, pp. 133 and 134.) An inspection of this law will show that it was carefully drawn, and in all respects provided for a secrecy of the ballots by the judges and clerks. A penalty of a fine and imprisonment is imposed upon any judge or clerk of election for disclosing or allowing

to be disclosed how any voter voted at an election. (See Sessions Laws, p. 137.)

Prior to the election in November, 1878, a judge of the district court of the State of Minnesota had declared this law requiring ballots to be numbered by the officers holding the election to be unconstitutional, on the general ground that it was a violation of the secrecy of the ballot (Record, p. 74). Since the election of 1878, and since this case was argued before the subcommittee, a decision has been rendered by the supreme court of the State of Minnesota, holding this law to be unconstitutional. Your committee need not, for the purposes of this case, turn aside to consider whether this law is unconstitutional or not, and it may be regarded, so far as the election of State, county, and municipal officers in the State of Minnesota are concerned, as unconstitutional. But we hold, first, that in so far as this law related to the judges of the election in the election of a member of the House of Representatives of the United States, it was constitutional; and, second, whether it is to be regarded as constitutional or not constitutional, the numbering of the ballots affords no reason, in the light of the law and the precedents, for rejecting the vote as cast. The legislature of a State does not acquire its right or power to make a law regulating the manner of holding elections for Representatives in Congress from the constitution of the State, but this right and power is derived exclusively from the Constitution of the United States. Section 4, Article I, of the Constitution of the United States is as follows:

> The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This provision of the Constitution of the United States has been under consideration in a very recent case in the Supreme Court of the United States (Ex-parte Seibold *et al.*).

An examination of the opinions delivered by Judges Bradley and Field, the former for the majority of the court and the latter for the two dissenting judges, will show that on the question of the derivation of the power of the legislature to make laws regulating the manner of holding elections for members of Congress, all the judges agree that the legislature obtains its power from, and solely from, the provision of the Constitution just quoted. The State legislature is not responsible to the State, nor controlled by the State constitution, in its action in regard to the manner of holding Federal elections. In case of a conflict between the act of a legislature and the constitution of the State in matters purely of a Federal character, the act of the legislature will prevail, provided it is not in conflict with the Constitution of the United States. This point was distinctly decided in the contested-election case of Baldwin *vs.* Trowbridge (Contested Election Cases in Congress, 1865 to 1871, p. 46).

The syllabus of that case reads as follows:

> Where there is a conflict of authority between the constitution and legislature of a State in regard to fixing the place of elections, the power of the legislature is paramount.

The case arose over the constitutionality of an act of the legislature of the State of Michigan, passed February 5, 1864, which undertook to give to Michigan soldiers, while in the service of the United States during the late war, the right to vote at all elections authorized by law, whether at the time of voting they were within the limits of the State of Michigan or not. The constitution of the State of Michigan in express

terms required the electors to reside in the State three months and in the township or ward in which they offered to vote ten days next preceding such election. The act of the legislature was declared by the Michigan courts unconstitutional, and yet Mr. Trowbridge, the sitting member in that case, was allowed to retain his seat, although he was elected by the vote of soldiers who were absent from the State, and who voted in accordance with the act named. The committee in that case reported, and the House sustained its report, that the law was constitutional, in so far as it provided qualifications of electors who voted for members of the House of Representatives of the United States.

Little need be said in view of the decisions of the court and of the House of Representatives to enforce this view. The power of the legislature, being derived directly from the Constitution of the United States, to regulate the manner of holding elections for members of the House of Representatives, can in no sense be controlled or limited by the constitution of the State. And there is no limit placed on the power of the legislature by the Constitution of the United States as to the manner of holding elections for Representatives. (See McCrary's Law of Elections, secs. 109, 110, 111, 112.)

There is an unbroken line of decisions, however, which are to the effect that notwithstanding ballots are numbered in the absence of or in violation of law, they are still to be counted. McCrary, in his Law of Elections (sec. 312) lays down the rule thus:

> Where the statute makes it a misdemeanor for the officer of election to place any number or mark on the ballot of the voter, but does not declare that ballots so marked or numbered by such officer shall be rejected, the true rule is to receive and count them. To reject such ballots would be to establish a rule under which an officer of an election could destroy the effect of a ballot cast in good faith by a legal voter by placing a number or mark upon it.

The direct question came up in the Forty-second Congress in the contest of Giddings *vs.* Clark (House Contested Election Cases, 1871 to 1876, p. 91), from the third district of Texas. It appeared in that case that the tickets were marked with numbers contrary to the statute of the State of Texas, which statute made it a misdemeanor for any judge of election to place any number or mark upon the vote of any voter, but which statute did not declare that the vote of a legally qualified voter should be rejected because his ballot was marked by the judges. The committee of the House in that case was unanimous in holding that ballots thus numbered, although in violation of the direct terms of the statute of the State of Texas, should still be counted. The report was drawn by the Hon. George W. McCrary, the author of the valuable work on American Law of Elections, and it was concurred in by all the members, both Republican and Democratic. On that report, Mr. Giddings, the contestant, a Democrat, was given his seat, and the Republican was unseated. We quote from that report:

> We would not be inclined to put a construction upon this statute which would enable an officer of election to destroy the effect of a ballot cast in good faith of a legal voter by placing a number or mark on it. A ballot may thus be marked or numbered without the knowledge or consent of the voter, and it would be manifestly unjust that he should be in this way deprived of his vote. We think it plain that, inasmuch as the statute fixes the penalty for marking a ballot, and does not expressly declare that a marked ballot should be thrown out, the board erred in rejecting the vote of this county upon this ground.

The same question is directly made in the case of McKenzie *vs.* Braxton, Forty-second Congress, Contested Election Cases, 1871 to 1876, pages 19 to 25. The report of the committee in this case was unanimous, and in favor of counting the numbered ballots. This was a Virginia case.

There had been a statute in Virginia requiring ballots to be numbered, but a short time prior to the election which gave rise to the contest this provision was repealed. But, notwithstanding the repeal, certain ballots were numbered. The majority of the Election Committee of this House in the Forty-fifth Congress decided to count ballots numbered in violation of law. (Finley *vs.* Bisbee, Report 95, p. 28, by Mr. Cobb.)

Many States in the Union require ballots to be numbered—some by constitutional provision. Pennsylvania, Kentucky, and Georgia are examples where ballots are required to be numbered by the organic law of the State, and it seems to be for the purpose of enabling, in case of a contest, the true result to be ascertained, and also for the purpose of preventing frauds and ballot-box stuffing. Many persons believe that the greater the publicity of the vote, the more clear and honest will be the expression of the will of the people. In some States voting *viva voce* has been successfully tried. The people of Virginia, from before the time of the Declaration of Independence (June 29, 1776), and during our constitutional government up to the rebellion, voted uniformly *viva voce*. George Washington, John Randolph of Roanoke, and all of the distinguished men of Virginia were ardent advocates of this mode of expressing the will of the people. The people of the State of Kentucky now vote at all elections *viva voce*, save for members of Congress, which is regulated by United States statutes, and it is understood to be universally approved by the people of that State; and this after it has been tried for many years. Ballots are required to be numbered in the State of Illinois.

Members of the committee claim that the ballots were numbered in the precincts named as a mode of intimidating voters. This rises almost to the dignity of a slander on a large class of workingmen and others who are usually the most independent of voters. It charges them with moral cowardice. The men who desire to resort to treachery in pretending, for bribery or other cause, to support one candidate, and then vote for another, may, under some circumstances, be inconvenienced by the numbering of the ballots. How many men are there in any community who want to deny their own manhood by saying they do not wish any person to know for whom or for what principle they have voted? Such persons can have no moral or other real influence in society, and they cannot command their own or their neighbors' respect. The fact is, there is rarely to be found in any community a single man who has not for weeks or months openly avowed his purpose to support certain candidates representing the leading issues of the campaign. We are not, however, disposed to condemn the secrecy of the ballot. It may be in certain cases a protection to the electors. The facts in this case afford no pretense for rejecting the vote in the precincts where the ballots were numbered.

There is not an iota of testimony in the whole record which it can be pretended tends to show that one of the electors in such precincts was influenced by reason of the ballots being numbered. The industry of contestant would have discovered some such evidence if the fact existed. The testimony does show that one eccentric or cowardly man, a lawyer (Robinson), refused at the polls to vote because the judges proposed to number the ballot (pp. 135, 137–138). This man disclosed the fact that he was a sort of Democrat, and that he did not want any person to know for whom he voted. The conclusion from his testimony is irresistible that he wanted to maintain his standing as a Democrat and at the same time vote for Mr. Washburn, and that by this means Mr.

Washburn lost the vote of one cowardly lawyer. Here are two excerpts from his testimony, and further comment is unnecessary:

Q. Are you a Republican or a Democrat?—A. I have always acted with the Democrats, except that I do not vote early and often. I am always satisfied with one vote.
Q Were you a partisan of Mr. Ignatius Donnelly?—A. I decline to answer, only to state that I am partisan to no one. I desire to vote independently, and that was my objection to numbering my ballot.

No other man, save Mr. Robinson, even asked the judges of election to refrain from numbering his ballot. The testimony discloses that one man only remained from the polls for the alleged reason that ballots were being numbered, and it would seem that this man, desiring to give some reason why he did not vote, offered this by way of an excuse as an afterthought. It does not appear that he complained on the day of election of the numbering of the ballots. Save these two persons, there could not be found among the about twenty-eight hundred voters who voted in the seven precincts where ballots were numbered any person who would even profess that numbering the ballots had influenced him not to vote or as to how he voted. This is as it would be expected, when we recollect the true and real character of an American citizen, especially such as resides in the progressive State of Minnesota and other States of the great West. It must be observed that the contestant does not ask to be credited with votes not cast for him by reason of the ballots being numbered, but asks that all the votes cast in the seven precincts where ballots were numbered should be rejected, and the voters of these seven precincts totally disfranchised. In the effort of contestant to prove that persons had been influenced on account of the numbering of the ballots, he proved that most of the witnesses who voted did not know whether the ballots had or had not been numbered, and it is to be presumed that few, if any, of the voters, save the officers of election in fact, knew that their ballots were being numbered.

Ballots were numbered in the first and second precincts of the second ward; in the first, second, and third precincts of the fourth ward; and in the first and third precincts of the sixth ward of Minneapolis, and in no others in the district.

W. D. Hanagan (p. 185), when asked, said he did not know whether the ballots in his precinct were numbered or not, although he was a swift witness for the contestant. He was at another precinct besides his own for several hours on the day of the election, during which time he did not find out whether the ballots there were being numbered or not.

Here are a couple of questions put to this witness and his answers:

Q. Where were you during election day?—A. From nine o'clock to about two and a half or three o'clock in the afternoon I was at the first precinct of the fourth ward. Then I went up to the first precinct of the fifth ward and voted, and remained there until the close of the polls.
Q. Were the ballots cast in the first precinct of the fourth ward numbered?—A. I do not know (p. 187).

This is the testimony of one of the contestant's witnesses. William Grimshaw, who lived in the second precinct of the fourth ward, and who was active there on election day, says that he was not positive that the ballots were numbered by the judges (pp. 155 and 181). The witness swears that he is uncertain whether the ballots were numbered in the first precinct of the fourth ward.

The witness Gonier, of the first precinct, sixth ward, who peddled tickets there for candidates, is asked, "Were the ballots numbered in your precinct?" and to this he answers, "I do not know" (p. 206).

There is other testimony of the contestant's witnesses of the same kind. Had there been complaint at all about the numbering of the ballots there would have been no person about the polls who was ignorant about it. But for the officers of the election the fact that ballots were numbered at these precincts could hardly have been proved. We note this to show that what was not at the time known could not now be held to have intimidated the voters. It is claimed that the ballots were numbered as a part of a scheme to intimidate voters. The fact appears to be that all the papers supporting Washburn published the statement that the ballots would not be numbered as the law requires, and it was at the instance, in some cases, of Democrats that they were numbered (pp. 136, 176). The ballots were not, as appears by the testimony, numbered with any view of intimidating voters, nor were they numbered, as claimed, in violation of a professed agreement by the judges of election in Minneapolis. It is true there was a meeting to consult about the matter, at which the majority of the election judges present expressed the opinion that ballots should not or need not be numbered. The following is the testimony of B. F. Nelson as to this meeting (p. 174):

Q. Did you attend the meeting of the judges of election of this city held shortly before said election to decide whether or not the ballots should be numbered at the election? If so, state when the meeting was held and what occurred.—A. I did attend the meeting; it was held in the council room, in the city hall building. Opinions were given that it might be proper and lawful to number the ballots. These opinions were given by attorneys called in for that purpose; by other judges, that it was necessary to number them. Some judges decided not to have them numbered at their precincts. The city attorney, William Lochren, informed us one of our judges had decided that it was unconstitutional to number the ballots. We did not agree in that meeting whether to number the ballots or not. There was a motion or resolution offered, but before the vote was taken it was understood that that motion was not binding on the judges. It was simply taken to get the sense of the meeting. I don't remember how the vote stood. It is my impression that the vote stood in favor of numbering the ballots.

Another one of the judges testifies as follows (p. 143):

Q. Did you attend a meeting of the judges of election of this city held shortly before said election to decide whether or not the ballots should be numbered at the election? If so, state what occurred.—A. I was present at such a meeting at the council chamber in the city hall. There was a discussion, pro and con, as to whether the ballots should be numbered or not numbered. Some thought that the law in reference to numbering was unconstitutional, but that the supreme court of the State had not declared the law as such; and other of the judges thought, as long as it was not declared unconstitutional by the supreme court of the State, that the law ought to be obeyed and followed; and after somewhat discussion of this kind there was an informal vote taken by the judges; there were about thirteen or fifteen votes in the affirmative and eight or ten in the negative. I mean there was thirteen or fifteen in favor of not numbering the ballots and eight or ten in favor of numbering, and I voted with those who were in favor of numbering ballots, because the law prescribed it.

Q. Were the ballots deposited in the ballot-box in your precinct at said general election held November 5, 1878, identified by placing on the back of the same a number corresponding with the number set opposite the name of the voter on the poll-lists?—A. Well, the judge of election received each ballot in presence of the other judges and the clerks, and called out the name of the voter, which was taken down by the clerk and numbered, and the same number was written on the back of the ballots; that is the way it occurred; and after it was numbered, it was, in the presence of all the judges and clerks, deposited in the ballot-box. There were no exceptions to this rule.

John Hinton, a judge of the election, testified on the same subject (p. 177):

Q. Did you attend a meeting of the judges of election of this city, held shortly before said election, to decide whether or not the ballots should be numbered at the election? If so, state when the meeting was held and what occurred.—A. I attended the meeting; the question was discussed. An opinion was given by Mr. Lochren, the

city attorney; his opinion was that it was unconstitutional to number the votes, and a vote was taken by the judges present; it resulted in a decision to discontinue the practice of numbering the votes. After that vote was taken there was a dissenting voice, Mr. Daniel Bassett; and the general understanding was that the judges should use their own judgment as to numbering of the ballots in their several precincts or wards. The meeting was held in the council chamber; it was in the afternoon before election, if my memory serves me right.

J. H. Conkey, also one of the judges, in speaking of the meeting of the election judges to consult on the subject of numbering the ballots, says (p. 198):

Q. Did you attend a meeting of the judges of election of this city, held shortly before said election, to decide whether or not the ballots should be numbered? If so, state where the meeting was held, and what occurred.—A. It was held at the council chamber in the city hall; I attended this meeting; the matter was talked over there, and it was left to the option of the judges after counseling the city attorney. The city attorney gave the opinion that either way would not invalidate the election; I think he said that there had been a decision rendered in Ramsey County that it was unconstitutional to number ballots; I don't remember whether a vote was taken or not.

The last witness discloses the fact that legal counsel gave the opinion that to number the ballots would not invalidate them, and on this opinion some of the judges acted rather than perform their duty in express violation of the terms of the recent law of the State of Minnesota.

The testimony of Daniel Bassett, a Democrat, and one of the judges, should also be read (p. 134).

But for the importance attached to the meeting of election judges by the contestant and certain members of the committee no attention would be given to it here. The meeting was an informal one and solely for the purpose of consultation, and was not intended and could not have been intended to bind any of the judges when they came to perform their official duties. The truth is, that the judges of election had to decide between following a plain requirement of the law or disregarding it. Some of them, under the advice they had, concluded to obey the law, notwithstanding the decision of the inferior court that it was unconstitutional.

It is further claimed that the numbering of the ballots in seven precincts of the city of Minneapolis was done in pursuance of a purpose to intimidate the workingmen, who are said to have lived chiefly in these precincts. There is no truth in the statement that the workingmen resided in these precincts. The record furnishes no such evidence. It is hardly proper to refer to the fact that the contestant in his desperation does make such a statement in his brief. But in the argument before the subcommittee this was emphatically denied, and it is still denied on the authority of persons residing in that city, including the mayor and others, who have forwarded affidavits to show that such unsupported statements were wholly untrue. One witness (Grimshaw), referred to by members of the committee, does say that a large number of workingmen resided in the second precinct of the fourth ward, a precinct in which the ballots were numbered; but this witness utterly disproves the charge that these workingmen were intimidated. On the contrary, he makes it quite certain that in this precinct and ward the workingmen did not want to vote for Donnelly. The vote stood in that ward, according to his statement, 57 for Donnelly and 357 for Washburn. Here is a statement of this witness on this subject in full (p. 181):

A. I believe that I have before stated that I was not acquainted in my entire ward, neither am I, but will say that in the second precinct, fourth ward, the one in which I live, there was four hundred and fourteen (414) votes polled at the last election, of which Ignatius Donnelly received fifty-seven (57). I believe I am acquainted with all of these men—will not say all—and know of none that is not a workingman. I am rather well acquainted in the city, having lived here nineteen (19) years, and believe that a large majority of workingmen voted for W. D. Washburn.

It is true that there was great activity in the city of Minneapolis immediately prior to and on election day. There was undoubtedly a rivalry between the cities of Minneapolis and Saint Paul, which led to an increased vote doubtless for Donnelly in the city of Saint Paul, and a largely increased vote in the city of Minneapolis for Mr. Washburn. Minneapolis was Mr. Washburn's home; he had done much to build it up, to advance its interest, and to provide work for its inhabitants. He was a public-spirited man, and had a just pride in his own city. Some of the contestant's witnesses declared that the election in the Congressional fight of 1878 practically resulted in one issue, and that a contest between the rival cities of Saint Paul and Minneapolis. The following is a question and answer which will throw light on this question (Stevens, p. 108):

Q. Was not the Congressional question at the last election considered of greater importance generally than any other office, and did it not cause more feeling among the voters?—A. Except among a comparatively small number of friends of candidates for local officers, the Congressional fight, or so-called contest for city supremacy, was practically the only issue; political consideration apparently sank out of sight, the rallying cry being *"Vote for Washburn and Minneapolis. Down with Saint Paul"; the battle soon became a rout, and ultimately a panic.*

The testimony of McCarthy is to the same effect (p. 24).

It is proper to observe that the nomination of Donnelly was distasteful to Democrats, especially in Minneapolis (p. 110).

The election in Minneapolis is clearly proved to have been an orderly one (p. 109).

Men were not discharged, as has been claimed, by their employers because they voted for Washburn (118).

In the conduct of the election on election day Democrats were very lukewarm in Donnelly's interest (p. 45). Some of the witnesses say that Donnelly's friends were afflicted with "APATHY" (pp. 140–41).

The only testimony which tends to prove that workingmen were afraid to vote for Mr. Donnelly on account of the fear that they would lose their jobs is purely hearsay, and entitled to no consideration whatever. Some of the witnesses testify that the workingmen did not vote for Mr. Washburn, but that his majority came from the citizens of the city of Minneapolis (p. 113).

Much has been said about Mr. Donnelly's last meeting in the city of Minneapolis. It is claimed that his meeting was interrupted, and in that way he was deprived of his proper influence upon the voters. It appears that in the meeting held by Donnelly in Minneapolis, on November 2, 1878, he indulged in a personal tirade against Colonel King, a former member of Congress, and attacked his character and reputation. This Mr. King resented, and advised Mr. Donnelly that unless he desisted from such allusions to him he would expose him in a way that he (Donnelly) would not want. Donnelly held his meeting, and no further interruption took place (p. 110).

The witness McGurk says that in this meeting Donnelly succeeded in converting quite a number, and that the attempt to break up the meeting failed. He further testifies on this point (p. 114):

Q. Do you not think that this attempt was an advantage to Mr. Donnelly instead of a detriment?—A. I think it was, judging from the indignation expressed by the people at Mr. King and the party. Mr. King was supposed to be the representative of Washburn.

Q. Then, in your opinion, the election, so far as it was affected at all, was so affected in favor of Mr. Donnelly by the scenes at this meeting?—A. Yes.

All of the alleged testimony in the record on the subject of intimidation, if, indeed, any of it could be called competent testimony, is so utterly shadowy that it does not deserve a critical review here.

We should, in the consideration of the charge of intimidation, keep in mind the salutary rule of law, repeatedly affirmed by the House of Representatives, that where it is alleged that a large number of persons have been deterred from voting by violence or intimidation, the testimony of those persons should be produced, or at least some of them. The opinions and impressions of others are not sufficient (McCrary's Election Laws, 430–431; Norris *vs.* Handley, 42d Cong.).

The rule of law universally recognized where elections are held by the people is, that those who may have voted, and yet did not when they could have done so, are bound by the result (McCrary's Election Laws, secs. 445–448; 10 Minn., 107).

The attempt on the part of members of the committee to work out some sort of demonstration from a comparison of the votes cast on different years in the city of Minneapolis is exceedingly far-fetched, and hardly deserves notice. To show the folly of attempting to demonstrate anything from a comparison of votes on different years in the city of Minneapolis, we insert a statement showing the vote on different years for different candidates, Republican and Democratic, in both of the cities of Minneapolis and Saint Paul. It will be observed from this statement that with a very light vote in 1879 the Republican candidate for governor received almost as great a majority as Mr. Washburn in the city of Minneapolis, and the Democratic candidate for governor received only about one-third of Donnelly's vote in that city in 1878. It will also be observed that the vote in the city of Saint Paul fluctuated in the years mentioned in the statement quite as much as in the city of Minneapolis. The following is the statement:

Statement of the vote cast in the cities of Minneapolis and Saint Paul for certain candidates, and in the years below specified.

	Minneapolis.	Saint Paul.
1875.		
Pillsbury, governor, Republican	3,652	2,459
Buel, governor, Democrat	1,041	3,116
1876.		
Hayes, President, Republican	4,149	2,566
Tilden, President, Democrat	3,229	3,553
Stewart, Congress, Republican	3,412	2,658
McNair, Congress, Democrat	3,862	3,101
(Stewart, a resident of Saint Paul, and McNair, resident of Minneapolis.) Legislative vote in Minneapolis, same year, was Republican, 4,214; Democrat, 2,929; in Saint Paul, Republican, 2,113; Democrat, 2,979.		
1877.		
Pillsbury, governor, Republican	3,245	2,867
Banning, governor, Democrat	1,569	3,078
Pillsbury was a resident of Minneapolis, and Banning of Saint Paul. A very light vote in both cities.		
1878.		
Washburn, Congress, Republican	5,033	1,378
Donnelly, Congress, Democrat	1,565	3,770
Same year Democratic majority for supreme judge in Saint Paul was only	.....	897
On State ticket (auditor)	.....	931
County ticket (sheriff)	.....	268
Same year Republican majority in Minneapolis on State ticket was	2,161	.....
Supreme judge	2,722	.....
County ticket	2,341	.....
1879.		
Pillsbury, governor, Republican	2,814	1,007
Rice, governor, Democrat	504	2,922
Same year Democratic majority in Saint Paul on county ticket was	.....	553
Same year Republican majority in Minneapolis on county ticket was	1,187	.....

The following statement shows the vote for governor in 1879 in the election in the counties composing the third Congressional distr.ct of of Minnesota. It may be of value by way of comparison.

Third Congressional district, vote of 1879 in said district.

County.	Rice.	Pillsbury.	County.	Rice.	Pillsbury.
Aitkin County	1	14	Morrison County	492	328
Anoka County	266	371	Ottertail County	653	1,517
Becker County	133	653	Pine County	105	61
Benton County	279	191	Polk County	338	730
Big Stone County	41	128	Pope County	56	621
Carlton County	64	51	Ramsey County	3,318	1,098
Chicago County	203	636	Saint Louis County	177	213
Clay County	85	340	Sherburne County	166	319
Crow Wing County	196	295	Stearns County	2,270	913
Douglas County	133	643	Stevens County	403	374
Grant County	44	389	Todd County	350	573
Hennepin County	998	3,744	Traverse County	3	18
Isanti County	45	327	Wadena County	57	321
Kanabec County	22	79	Washington County	1,472	1,183
Kittson County	96	138	Wilkin County	99	198
Lac qui Parle County	17	591	Wright County	1,326	1,347
Lake County	11	4	Yellow Medicine County	87	722
Meeker County	363	870			
Mille Lacs County	56	106	Total	14,425	20,106

SUPPLEMENTAL RETURNS.

Through an error of the secretary of the State of Minnesota, in not furnishing the proper blanks to the election officers, there were a number of instances where the votes polled for candidates for Congress were not returned and counted by the county canvassing boards (p. 320). The omission to make full returns occurred in Minneapolis, and in Stearns, Morrison, and Douglas Counties. The contestee does not dispute the right of the contestant to count the votes cast in the counties of Stearns and Morrison, in each of which counties the contestant received a majority. Nor do we understand that any serious objection can be made to counting the vote in Leaf Valley precinct, in Douglas County (p. 270), where the contestant claims to have received all the votes.

Supplemental returns were made on the 12th day of November, 1878, by the election officers of the precincts in the city of Minneapolis, where they had omitted to make the returns for member of Congress immediately after the election. These precincts were first precinct, first ward; second precinct, second ward; and third precinct, fourth ward. The majority for Washburn in these precincts was 714 (pp. 348–349). We see no valid objection to these supplemental returns. They were made by the proper officers and within the time required by law to canvass and make returns. The supplemental returns from the three precincts of Minneapolis were duly canvassed by the county canvassing board (p. 348–351); but it is hardly necessary to waste time in considering the validity of these supplemental returns. They were put in evidence by the contestant (pp. 58–63). The testimony clearly and unmistakably, independent of the supplemental returns, shows the vote as cast for member of Congress in these precincts. It must be observed that all the witnesses who testified on the subject of the vote in these precincts agree that the vote for member of Congress was duly canvassed, though not returned.

Asa R. Camp, one of the judges of the election of the second precinct of the second ward in the city of Minneapolis, testifies to the vote cast for Congress in that ward (p. 322). And he testifies also that the supplemental return, as made, is true in all respects (p. 323).

Isaac McNair, one of the judges of the election in the same precinct and ward, testifies that the vote was canvassed by the judges of election

for member of Congress; and he also gives the vote from recollection and memorandum as it appears by the supplemental return (pp. 323–324).

Thomas F. Andrews, another one of the judges in the same precinct, swears to the same state of facts (pp. 325–326).

John M. Williams, one of the clerks of election of the second precinct of the second ward, testifies to the same facts stated by the judges of election (pp. 326–327).

Charles Thielen, a judge of the election of the first precinct of the first ward of the city of Minneapolis, testifies to the canvass of the votes in that precinct and to the correctness of the supplemental return (pp. 327–328).

John Thielen, another one of the judges of election for the first precinct of the first ward, establishes the same fact (pp. 328–329).

Michael Lyons, the other judge of the election in the precinct and ward just named, is equally clear in establishing the fact that the supplemental return made for that precinct and ward was correct in giving the vote for member of Congress (pp. 329–332).

Allen Hill, one of the judges of election in the third precinct of the fourth ward, testifies that the vote for member of Congress was canvassed and, by reason of a deficiency in the number of blanks furnished, was neglected to be returned. But he testifies to the vote of that precinct, and that it corresponds with the supplemental return (pp. 332–335).

Frederick Paine, one of the clerks of the election in the third precinct of the fourth ward, testified to the canvassing of the vote and the ascertainment of the result as to member of Congress. He gives the vote in this precinct for Washburn, 566; Donnelly, 83; Stewart, 1; and says that 19 ballots contained no vote for member of Congress. He says, also, that this vote was announced on the night of the election publicly, and that it corresponds with the supplemental return made by the officers of the election on the 12th day of November, 1878 (pp. 335–339). The papers on the following morning after the election, to wit, November 6, 1878, offered in evidence in this case, give the vote of this precinct and ward, as well as of others, as appears by the supplemental return (p. 352). One at least of these papers, the Saint Paul Globe, was published in the interest of Mr. Donnelly (p. 338). The witness, Paine makes it certain that the vote was announced as soon as canvassed by the judges of election, and was taken by the reporters from the figures given as the result of the election in this precinct.

William Cheney, another judge of the election in the third precinct of the fourth ward, also gives the result of the canvass and the election in his precinct; and he establishes the fact that the supplemental returns for his precinct were correct (pp. 338–342).

Daniel Bassett, a Democrat, and one of the judges of election in the third precinct of the fourth ward, also testifies to the correctness of the vote returned for members of Congress in his precinct, though his memory has to be refreshed by exhibiting to him an original paper, containing a memorandum of votes, kept at the time the canvass was made in his precinct. The supplemental returns made by the judges of election will also be found in the record as offered by contestee (pp. 348–350).

The only person who makes any question about the correctness of the vote in these three precincts is John B. Bottineau, who was a clerk of the election in the third precinct of the fourth ward. He made a protest as to his precinct against the supplemental return made by the judges of the election and the other clerk, on the ground, as it appears by his protest, that he himself kept a memorandum (not a tally sheet),

which he is not willing to say was honestly kept, but which he says showed the vote in this precinct to have been for Washburn 336, and for Donnelly 313 (p. 350).

Some respect might be shown to this protest (although there was no authority of law for making it) if the man who signed it was himself willing to say that his own memorandum was true. Even in his protest he is careful not to say that the vote for Donnelly and Washburn, stated on his memorandum, was the correct vote received by them at the election, but when he is put to the test of swearing to it, he utterly fails to say that it does give the correct vote. It must be noted that the supplemental return in this case was signed by Daniel Bassett, the Democratic judge of the precinct and a partisan of Mr. Donnelly. When Mr. Bottineau was asked, in his examination by the contestant, to give the manner in which the count and canvass of the ballots were made, and state any discrepancies in the different tallies made by the judges and clerks during the count and canvass, he had recourse to his own memorandum kept at the time. The memorandum this witness refers to was not the tally sheet, but a mere memorandum kept by him, on which he put down, or pretended to put down, figures at different times as the canvass proceeded, indicating the vote as cast for members of Congress. An inspection of a printed copy of this memorandum (p. 281) and of the original in evidence will enable any person to see that this witness, either corruptly or honestly, put down the figures in such way as to show that Donnelly received 230 votes more than the tally sheet shows he received, and which the judges and the other clerk of the election make clear was the true vote. When put to the test, this witness confesses that he made an error in keeping his memorandum (p. 277). On the night of the day of election, when the canvass was made, he did not even pretend to claim that there was any discrepancy between the vote as kept by the other officers of election and himself (p. 277). He was asked how it was possible for a difference of two hundred in the vote for Donnelly to exist and he not know it at that time, to which he answers:

> It is either a mistake of one of us, and perhaps a mistake of both of us. I am confident we were both mistaken (p. 277).

We give in full the closing part of this witness's testimony, in order to make it appear that no reliance is to be placed upon his pretended protest. It will be observed that he says, "I cannot say that I believe it (referring to Exhibit C, containing a true showing of Donnelly's vote), nor can I say that I disbelieve it" (p. 278).

> Q. From your intimate knowledge of the politics of this county, as before stated, do you believe Exhibit C contains a true showing of Donnelly's vote?—A. I cannot answer it. At the time I sat it down I believed it to be the actual vote of Donnelly. I cannot say that I believe it now, nor can I say that I disbelieve it.
>
> Q. When you swore to Exhibit D did you believe that Donnelly had received the number of votes set opposite his name in Exhibit C?—A. I don't know whether I did or not; I expected the two tally sheets would correspond as they did in relation to other candidates, which they did not.
>
> Q. Were you not surprised at Donnelly's vote on the night of the election when you made this Exhibit C, showing that he received 313 votes?—A. I was surprised that he had received so small a vote, according to the enthusiasm in his favor that I had seen.
>
> Q. Did you make the figures "200" and "30" set opposite Donnelly's name, in Exhibit C, as the votes were read out on election night?—A. The votes were not read out on election night by either of the judges or clerks in making the canvass; I placed those figures at the same time as the other tally sheets, as they were announced as found by each, judges and clerks.
>
> NOTE.—This being the last witness examined on the direct, in Minneapolis, contestant's counsel desires to say, may the Lord have mercy on the hindermost in the final outcome. Amen.

The objection to these supplemental returns is so purely technical, that we hardly think it important to give the matter the consideration already given to it in this report.

Some complaint is made that the contestee did not have the ballots counted in the ballot-boxes, and offer proof of the result of such count in this contest; and certain members of the committee think this would have been the best and highest evidence of how the vote stood. The contestee has given the vote as cast in these three precincts, as found by the officers who held the election, on an *actual count* of the ballots made by them as soon as the polls closed. It is hard to conceive how it is possible for a new count of the ballots by unauthorized persons long after the election would constitute higher evidence of the true state of the vote in these precincts than we have already given. It would be exactly the same character of evidence, but given by persons not authorized under the law to make the count.

UNORGANIZED COUNTIES.

It was stoutly claimed by the contestant that the votes cast in the several counties of the district should be excluded wholly, on the ground that they were in unorganized counties. Some dispute arose between counsel as to what constituted an unorganized county; and there was some difference between counsel as to what particular counties were organized by express provision of the statutes of the State of Minnesota and what counties were not organized. It is not at all important, in the view we take, whether these counties were organized or not, because it is perfectly clear, under the statutes of Minnesota, that for the purpose of voting for State officers, for members of the legislature, and for members of Congress, voters living in unorganized counties are as much entitled to vote as those who live in organized counties. It is understood that the committee is unanimous in holding that the vote of no county in the district should be rejected on the ground that it was an unorganized county, and we shall give this subject no further consideration.

ISANTI COUNTY.

The contestant attacks the entire vote of Isanti County. The returned vote from that county was 538 for Washburn, 137 for Donnelly, scattering 2. The contestant's objection to counting the vote returned in the county of Isanti is set forth in paragraph 8 of his notice of contest. It is as follows:

> The votes alleged to have been cast for you at said election in the county of Isanti, in said district, were not cast, or counted for you, or returned, or canvassed, as provided by law.

The true construction of this part of the notice of the contestant is that he objects, not to the vote because it was not cast, nor because it was not counted, nor because it was not returned, nor because it was not canvassed, but because it was not cast, counted, returned, or canvassed *as provided by law.* There is nothing in the evidence offered by the contestant tending to show that the vote of this county was not cast as returned, was not counted as returned. or was not canvassed as returned, except what appears on pages 68 and 69 of the record. There it is made to appear that there was a complete abstract of the vote made as cast in the several election districts of the county, and duly certified to by the auditor of the county and district, whose certificate is attested by one A. B. O'Dell, who designates himself judge of probate, and Jonas Burch, who signs *himself* as justice of the peace. Had O'Dell signed and

attested the auditor's certificate as justice of the peace there would have been no objection to counting this vote. This is a mere irregularity, which does not vitiate the *returns;* and if it did, the vote is not to be rejected unless the contestant shows it to be illegal (McCrary's Election Laws, sec. 302, and cases there cited).

The statute of Minnesota (Bissel's Revision, vol. 1, p. 172, sec. 28) provides:

> The county auditor and two justices of the peace of his county, by him selected, constitute the county canvassing board, and on or before the tenth day after the election said board shall proceed to open and publicly canvass the several returns made to the auditor's office.

Section 40 of the same Revision of the Statutes (p. 176) is as follows:

> The abstracts of the votes for members of Congress and electors of President and Vice-President shall be made on one sheet, and, being certified and signed in the same manner as in case of abstracts of votes for county officers, shall be deposited in the said county auditor's office, and a copy thereof certified as aforesaid shall be inclosed, directed to the secretary of state, and indorsed on the outside of the envelope with these words: "Abstract of votes for (naming the officers) returned to the auditor's office of (inserting the name of the county) county," and the said auditor's signature; and the said auditor shall forward the same to the secretary of state within eleven days after such election.

The statutes of Minnesota require nothing of the county canvassing board but to compile the returns made to the auditor of the county, and the auditor to certify to the same. The justices of the peace selected by the auditor to constitute with him the county canvassing board are not required to do anything more toward certifying to the truth of the abstract than to *attest* the signatures of the auditor. The statutes of Minnesota provide a form for the abstract and for the certificate, and in that form the two justices of the peace sign their names under the word "*attest*" to the left of the signature of the auditor. (See Bissel's Statutes, p. 174; also Young's Minnesota Statutes, 1878, p. 46). The real purpose of selecting justices of the peace as a part of the county canvassing board, and to assist the auditor of the county, is doubtless that they shall be present to prevent the auditor in making up the abstract of votes, if so disposed, from committing any fraud. The board has no authority either to accept or reject any returns made to the county auditors, in their estimate of the votes, for any informality in holding an election or making returns thereof. The following is the law of the State on this subject:

> No election returns shall be refused by any *auditor* for the reason that the same are returned, or delivered to him, in any other than the manner directed herein; nor shall the canvassing board of the county refuse to include any returns in their estimate of the vote for any informality in holding any election, or in making any returns thereof, but all returns shall be received, and the votes canvassed by such canvassing board, and included in the abstracts; provided there is a substantial compliance with the provisions of this chapter (Sec. 37, Bissel's Statutes, p. 175).

For an authoritative construction of this section, see 18 Minn., 351.

The final canvass of the vote for a member of the House of Representatives is made by the governor and secretary of state, in the presence of the auditor of state, the attorney-general, and one or more judges of the supreme court. We quote from section 41 of Bissel's Statutes, page 176, as follows:

> Within twenty days after said election the governor and secretary of state, in the presence of the auditor of state, the attorney-general, and one or more judges of the supreme court, shall open the returns, made to the secretary of state, for members of Congress and for electors of President and Vice-President of the United States, and shall forthwith proceed to ascertain the number of votes given to the different persons for said offices, and the persons having the highest number of votes shall be considered duly elected.

It is thus made perfectly clear that it is the final action of the governor and secretary of state, who have before them a complete abstract of the votes of each county of a Congressional district, which determines the election of the member of Congress. The presence of the auditor of state, the attorney-general, and one or more judges of the supreme court is required to insure perfect fairness in this canvass and entire freedom from fraud; and, possibly, they are required to be present to aid the governor and secretary of state in the canvass, in case questions should arise in relation to the canvass. The contestant desires that an entire county should be disfranchised, not because it is made to appear by the final canvass of the vote of this county that it was not properly cast, but because one man attests the certificate of the auditor who does not sign himself a justice of the peace. It is not proved that the actual canvass of the vote by the county canvassing board in this county was not made by the auditor and two properly selected justices of the peace. Indeed it does not appear in the case that the attesting witness, A. B. O'Dell, who signed himself as judge of probate, was not in fact a justice of the peace. The most that can be said for this certificate to the abstract of the vote is that it is informal, and this the statute of Minnesota, in express terms, provides shall not be a good ground for setting it aside. We quote from the section of the statute which prescribes the form of an abstract of votes for county canvassers:

> The following is the form of the abstract of votes provided for herein to be used by all county canvassing boards, but no election shall be set aside for the want of form in the abstracts, provided they contain the substance. (Sec. 33, Bissel's Statutes, p. 173.)

See also form of abstract and certificate, Young's Minn. Stat., 1878, p. 46.

This single item of evidence against counting the vote of Isanti County is that the auditor's certificate has not been duly attested. It cannot be said that the abstract of the vote was not canvassed by the proper officers and in accordance with the law of the State. But if it even appeared that but one justice of the peace acted with the county auditor in making up the abstract and canvassing the vote of the county, there would be no legal objection to it under the laws of that State. Subdivision 3, section 1, title 1, chapter 3, Bissel's Statutes, page 118, reads as follows:

> Words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers or persons.

We do not think it is even important to rely upon this excellent provision of the statute of Minnesota. But if there should be any doubt about it, the general principle of this statute makes it clear. It has frequently been held, in the absence of such a statute as we have just quoted, that where a certificate is by law required to be made by a board of officers composed of three or more persons, it is sufficient for a majority of such board to join in such certificate. (See McCrary's Law of Elections, section 158, where the subject is discussed; also Niblack *vs.* Walls, Forty-second Congress, where it was held that, if less than a majority sign, the certificate is not good.) In the case of Niblack *vs.* Walls the committee say:

> The committee are of the opinion that where the law requires the certificate to be made by three officers, a majority at least must sign to make the certificate valid.

Much stress is laid upon the fact that one of the attesting witnesses to the certificate of the abstract of votes was a mere intruder. While

it may be true that where an intruder into a board, which had a duty to perform requiring some judicial action, and it appeared that such intruder participated in the determinations of such board, and was allowed a voice in the deliberations of the board, would render the acts of such board invalid, yet, as in this case, where the alleged intruder is not shown to have performed any duty, or attempted to perform any duty, other than to sign his name in the place of a justice of the peace, as a mere witness to the certificate of an officer, attached to an abstract of votes not shown to have been illegal or improperly made, it is hard to conceive how such signature could invalidate the acts of the other officers, who had legal authority to act.

The case of Delano *vs.* Morgan (2 Bartlett, p. 171) is said to be in point, and to sustain the claim of the contestant that this certificate to the abstract of votes is not good, and that the whole vote should be thrown out. There is no possible analogy between the two cases. We are not prepared to say that the law of that case is right. The question there was whether too persons, who were the judges of the election in Pike Township, Knox County, Ohio, could legally hold an election while sitting with a third person, who acted as a judge, who had not the qualifications of an elector, and under the law of Congress and the constitution and laws of Ohio was not competent, and was ineligible to act as a judge of election. By virtue of the statute of the State of Ohio in force at that time, three persons, and not two in any case, were required to act as judges of election, each of whom was required to have the qualifications of electors. These judges of election were not canvassing officers in any sense, but it was their duty to pass upon the qualifications of each elector at the polls during the time the vote was being cast.

From a reading of the report in the case of Delano *vs.* Morgan it is not at all clear that if there had been two competent judges and no supposed intruder in the board the vote of this township would have been thrown out. There are members of this committee who have very decided views against the correctness of that decision. They think that, notwithstanding a person acted in the capacity of a judge of the election who had not the legal qualification to serve as such judge of election, yet, if he did act, he was *de facto* a judge of the election, and the whole vote of the township should not have been rejected and the voters disfranchised, without proof that the board had acted fraudulently or wrongfully in the conduct of the election.

The views of the minority of the committee, as presented by Hon. M. C. Kerr, of Indiana, in the Delano-Morgan case, seem to be unanswerable. (Contested Election Cases, 1865 to 1871, p. 183.)

The case of Howard *vs.* Cooper (1 Bartlett, 282) is supposed to sustain the claim that the return of the vote given in Isanti County, as it appears in the record, is not a valid one. That case was one where there were but two members of the board of inspectors to receive the votes, where the law required in express terms that there should be three. In the absence of one of the three members of the board of inspectors in the State of Michigan, where this case arose, the by-standers were required to elect an inspector to fill the vacancy, and this was not done. Under the state of the law in Michigan at that time, it was not possible to have a board of inspectors constituted of a less number than three. The committee in the Michigan case say:

> Your committee have rejected the vote of the township of Van Buren. The law requires that the board of inspectors shall be composed of three persons in number. The proof is clear that there were but two. As there was no board of inspectors known

to the law, your commiteee see no way by which any legal effect can be given to the returned vote. They have, therefore, deducted it, although it can in no way affect the decision in this case, whether it be deducted or retained.

The above is all the report contains on the subject of rejecting the vote of Van Buren County. It is made perfectly clear that the committee in that case put their decision on the ground that a board of inspectors consisting of but two persons only could not, under the laws of Michigan, legally act. We quote from the remarks of Mr. Dawes, a member of that committee, while the case was under discussion in the House:

In the town of Van Buren, in that county, there were but two inspectors of election, although the law requires three. The town clerk is *ex officio* one of the inspectors of election. In that township the town clerk was not present during any part of the day except to cast his vote and go away. The law requires that in the absence of any one of the inspectors appointed, one or more shall be chosen from the by-standers to take his place, who shall continue to act as inspector. The town clerk is also required to be one of the clerks of election to record the votes.

But neither of these cases can be said to have any sort of analogy to the one under consideration, where the sole question is whether the failure to have two attesting justices of the peace to a certificate attached to the abstract of the votes of a county justifies the rejection of the entire vote of a county. This abstract of the votes cast in the county of Isanti is not attacked on the ground that it is in any sense untrue. It is doubly certified to be true, aside from the formal certificate already referred to. To this same abstract is appended the following certificates from the auditor of Isanti County and the secretary of state of Minnesota (p. 69):

STATE OF MINNESOTA, *County of Isanti:*

I, T. C. White, county auditor of said county, do hereby certify the foregoing to be a full and correct copy of the original abstract of the returns of the general election held in said county and State on the 5th day of November, A. D. 1878, now on file in my office.

Witness my hand and the official seal of said office, at Cambridge, in said county, this 8th day of November, A. D. one thousand eight hundred and seventy-eight.

{ OFFICIAL SEAL OF } { COUNTY AUDITOR. }

T. C. WHITE,
County Auditor.

STATE OF MINNESOTA, *City of Saint Paul, ss:*

OFFICE OF SECRETARY OF STATE.

I, J. S. Irgens, secretary of state of the State of Mninesota, do hereby certify that I have carefully compared the foregoing with the original thereof on file in said office, and the same is a true copy thereof and of the whole of the same.

In witness whereof I have hereunto set my hand and the great seal of the State, at said Saint Paul, this 11th day of February, A. D. 1879.

[SEAL.]

J. S. IRGENS,
Secretary of State.

Aside from this abstract of votes, as given on pages 68 and 69 of the record, the contestant has himself put in the record the highest evidence of the fact that the vote of Isanti County was cast and returned as it was counted. On page 58 of the record we find, over the certificate of a notary public, the following:

8th. Contestant offers certified copy from office of secretary of state of abstract of votes cast in the several counties in the third Congressional district at the general election held on the 5th day of November, A. D. 1878; also certain certificate of the State canvassing board, hereto attached and marked Exhibit 8.

By reference to Exhibit 8, thus put in evidence by the contestant, on page 72 of the record, we find the vote of Isanti County is put down as cast—Washburn, 538; Donnelly, 137; scattering, 2.

This abstract, relied upon by the contestant to prove the vote as cast in the several counties of the Congressional district, is certified to by the governor, secretary of state, auditor of state, attorney-general, and the chief justice of the State of Minnesota, and there is also a special certificate attached to this same abstract in the words and figures following:

STATE OF MINNESOTA,
Office of Secretary of State:

I, J. S. Irgens, secretary of state of the State of Minnesota, do hereby certify that I have carefully compared the foregoing abstract of votes for members of Congress cast in the third Congressional district, State of Minnesota, with the original abstract now on file in this office, and that the same is a true and correct copy thereof.

Witness my hand and the great seal of the State this 19th day of February, A. D. 1879.

[SEAL.]

J. S. IRGENS,
Secretary of State.

The contestee has also put in evidence, properly certified, a complete abstract of the vote of the district (Record, pp. 343, 346).

It has already been made to appear that the notice of contestant does not directly attack the vote of this county. If, in the notice, the contestant intended to charge that the vote was not cast, it was his duty to offer proof in support of the charge. The record is silent. If he, by his notice, intended to claim that the vote was not counted, he should have proved that claim. If, by his notice, he intended to allege that the votes of the several voting districts of the county were not returned by the county canvassing board, it was his duty to have offered proof of that. If, by his notice, he intended to deny that the vote of this county was not canvassed, on him rests the burden of proof of that. He contents himself by simply claiming that there is a failure to have a suitable number of duly authorized persons sign the certificate to the abstract by way of attesting it.

The defect in the returns from Morrison County, where the county auditor wholly fails to sign the certificate, and only one justice of the peace signs it, is not regarded by the committee (pp. 304, 284).

Before leaving this subject it may be proper to go further into the question of the duties of canvassing officers. Such duties, under the statute as it exists in the State of Minnesota, are purely ministerial. The canvassing board has only the right to cast up the votes as they appear from the returns of the officers of the different precincts of the county. They have no judicial power. In the case of the State *vs.* Stearns (44 Missouri, p. 223) the court, after holding the duties of such canvassing board to be purely ministerial, say:

When a ministerial officer leaves his proper sphere and attempts to exercise judicial functions, he is exceeding the limits of the law and guilty of usurpation. To permit a mere ministerial officer arbitrarily to reject returns at his mere caprice or pleasure is to infringe or destroy the rights of parties without notice or opportunity to be heard; a thing which the law abhors and prohibits.

McCrary, in his work on Elections (section 82), says:

The true rule is this: they must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose, and this necessarily implies that if a paper is presented as a return and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself. Thus in New York it has been held that the duties of the canvassers were "to attend at the proper office and calculate and ascertain the whole number of votes given at any election and certify the same to be a true canvass." This is not a judicial act, but merely ministerial. They have no power to controvert the votes of electors.

In a case in 22 Barbour, page 77, the following language is used:

> They (the canvassers) are not at liberty to receive the vote of any one outside of the returns themselves; their duty consists in the simple matter of arithmetic.

McCrary, also, says that the doctrine that canvassing boards and return judges are ministerial officers, possessing no discretionary or judicial power, is settled in nearly or quite all of the States of the Union.

It has been directly settled by decisions in the State of Minnesota (2 Minn., p. 180; 10 Minn., p. 107; 18 Minn., p. 351.)

See McCrary's Law of Elections, sections 81, 82, 83, 84, and 85.

Even though the return must be set aside, the election must stand, unless the party who attacks it shows fraud or other illegality in the election. (McCrary's Election Laws, secs. 306 and 364–369.)

It is hard to conceive how a mere ministerial board of officers can be rendered illegal and all its acts declared to be void, simply because one person does not sign himself as an attesting witness to a certificate annexed to an abstract by such designation as to show affirmatively that he was a proper officer to do so.

It may be proper to again observe that the contestant, in his printed argument before the committee, rested his objection to the vote of Isanti County solely upon the ground that the abstract of the vote, as certified on page 64 of the record, was not duly signed, and not upon the ground that the abstract was itself inaccurate or false in any respect. It is true he claims (which is not true) that the burden rested on the contestee to go behind the return and prove the vote. It is quite sufficient to say that the contestant has himself conclusively performed that duty for the contestee, if it were admitted that it was the latter's duty to have offered any proof on the subject before the vote was attacked. We do not admit, but deny, that the burden was at all, under the notice of contestant, thrown upon the contestee to prove the vote of Isanti County. The contestee has however himself made the proof. As already appears, the notice of contestant does not attack the fact that the vote was cast. He simply undertakes to allege that it was not cast, &c., *as provided by law*, leaving the fact of its being cast to remain unchallenged. The contestant, moreover, directly admits in his brief, in effect, that the vote was cast as returned and counted. While he says the burden rested upon the contestee to prove this fact, and that the contestee declined to do so, he does say, quoting his exact language, "Had he done so the contestant was prepared to show the grossest irregularities in the conduct of the election in said county." He thus admits that the vote was cast, but seems to think that when contestee offered proof of the fact, which he himself had already proved (as well as the contestee), that it would open the door for him to offer proof of the grossest irregularities in the conduct of the election in that county, notwithstanding the fact that there is not a word in his notice of contest which indicated any kind of irregularities in the election in that county, but he failed to do so. This county gave to the contestee, Mr. Washburn, a majority of 401, nearly 200 in excess of the majority which certain members of the committee find was the majority of the contestant after rejecting all the votes as indicated in its views. It is thus made to appear that, on what could not be dignified as a technicality of the law, it is proposed to unseat the sitting member, and to seat a man who was not, as is admitted by himself in his printed argument, elected.

It should be noted, in conclusion, on this point, that the law makes it

the duty of the committee or the House to send for and tabulate the original precinct returns if the true vote cannot be ascertained from the return. (McCrary, &c., sec. 345.)

POLK AND KITTSON COUNTIES.

A portion of the committee propose to throw out the entire vote of Polk and Kittson Counties. The returned vote in Polk County was 659 for Washburn, 180 for Donnelly; and in Kittson County there were 183 votes for Washburn, and 2 for Donnelly. We have already considered the objection to the vote cast in Crookston precinct, Polk County, and to the vote cast in Tamarack and Two Rivers precincts, in Kittson County, the only voting precincts in Kittson County. To reject the votes cast for Washburn in the three precincts in the counties named would still leave him 436 votes, which votes certain members of the committee propose to reject, solely upon the ground that the votes of these two counties were canvassed and returned together by the canvassing board of Polk County (p. 64). The abstract of the vote, as it appears in the record, does show that the vote of these two counties was so canvassed and returned. It is conceded on every hand that Kittson County was, at the time of the election in November, 1878, an unorganized county. It was attached to the county of Polk, an organized county, for election purposes, in accordance with the law of the State of Minnesota, and the return thus made is in exact accord with the requirements of the statute of the State. We give here in full the section of the statute bearing upon that subject. It is as follows:

> After the canvass is thus completed, the judges of election, before they disperse, shall inclose the said returns in a cover, seal the same, and indorse thereon the following words, viz: "Election returns of the election district of ———, in the county of ———," and direct the same to the county auditor of their county; and the said returns shall, within five days of the day of election, be conveyed by one of said judges, to be chosen by lot, if not otherwise agreed upon, and delivered to the said county auditor at his office: *Provided*, That the returns of election in unorganized counties shall be made to the auditor of the county to which they are attached for elective purposes, and the votes shall be canvassed, and certificates of election issued to the persons elected, in the manner provided in this chapter for canvassing votes and issuing certificates of election in organized counties. (Bissel's Statutes, p. 171.)

The abstract and certificate thereto and the attestation thereof are in precise accordance with the requirements of the law of the State of Minnesota. It is not true that the vote of the counties of Polk and Kittson is lumped together in such abstract. The abstract itself, as well as the proof in the case, shows that there were but two precincts in the county of Kittson, and the vote of these two precincts is stated in the abstract separately. There is no difficulty about separating this vote on a mere inspection of the abstract, but if it were true that the vote of the several precincts could not be distinguished, it would not be an objection, for still the abstract would be in accordance with the law of the State. It is expressly admitted by the contestant in his argument, and all the way through the case, that the majority for Washburn, as returned in the county of Polk, was 497, and also that the majority as returned for Washburn in the county of Kittson was 181. On what theory members of the committee are now able to say that the vote of these two counties is so intermingled as to be indistinguishable we have not been able to discover. In the contestant's printed brief, under the head of "Polk County," in speaking of the contestee's majority, he expressly states that 497 of his majority was received from *Polk* County alone (printed Brief, p. 4). The witnesses, in speaking of

these two counties and giving the votes by precincts, also mention the vote, as indicated in the abstract referred to.

The contestant has put into the record a complete abstract of the votes cast in the several counties in the State of Minnesota, in which the vote of Polk County is given, Washburn 659, Donnelly 180; and Kittson County, Washburn 183, Donnelly 2 (Record, pp. 58, 72). The same and a similar abstract has also been put in evidence by the contestee, which shows the vote as stated (Record, pp. 343, 346). This abstract of the entire vote cast in the third district of the State of Minnesota in itself proves the vote to have been cast for the contestant and contestee as given in the abstract found on page 64 of the record. It is proper to observe that there is nothing in the record to show that other returns of the vote cast in the county of Polk and the county of Kittson may not have been made separately. And it is important to say that in the contestant's notice nothing is said by way of objection to the return made of the vote cast in either of these counties; but, on the contrary, the contestant, in paragraph 7 of his notice, expressly admits that the votes of these two counties were cast, returned, counted, and canvassed without attacking the regularity of the return or the counting or the canvassing of such vote. He does say in his notice that "the officers receiving, counting, and canvassing said alleged votes were not officers of said election districts or said counties," thus expressly admitting that officers did receive, count, and canvass the votes. There is, however, no objection made to appear by the evidence that the officers were not the *proper officers* to receive, count, and canvass the votes. We are cited to the testimony of one witness, John N. Gilman, to show that this county was not attached to some other organized county for election purposes.

But the proof of this witness is, that as a lawyer he did not know that it was legal for votes to be cast in unorganized counties, and he had never seen a law authorizing certain unorganized counties to be attached to organized counties for election purposes (p. 41). The contestant claims in the face of the record and the official returns from Polk County that he has proved that one precinct, to wit, Farley, which gave Washburn 9 votes and Donnelly 24 votes, was not, in fact, in Polk County, as appears by the abstract. If his testimony could be relied upon, and his objection was good, and contestant's notice justified the proof, which it does not, the contestee might be quite willing to have the vote of this precinct rejected. There is no attempt to offer any proof to show that any other precinct canvassed and returned in Polk or Kittson County was not in the counties indicated in the abstract. But the sole witness relied upon to prove that Farley precinct was not in Polk County has no sort of knowledge on the subject. The first question asked him by the contestant (p. 226) was as follows:

Q. Do you know whether the polling place at Farley is in this [referring to Polk County] or Kittson County?

His answer was—

A. I was told that the polls of Farley was not in Polk County. No, sir; nothing else.

His testimony on cross-examination is as follows:

Q. Do you know where the north line of the county lies as regards Farley?—A. I could not tell you exactly where it is, but I thought it was outside of the line.

This is too shadowy to found a judgment upon to overthrow the official returns and canvass of a precinct as made by officers who are to be presumed to have done their duty as precinct, county, and State officers.

The testimony itself is not competent, because it is purely hearsay, and shows upon its face that the witness is talking from mere rumor. It is a well-known fact that for many years the vote in these two counties has been counted, canvassed, and returned together for all State officers, as well as for electors and members of Congress.

In the absence of proof it should be conclusively presumed that the election officers in election districts or precincts, and the county canvassing board of Polk County, and the State canvassing board, composed of the governor and the secretary of state, who are required to act in the presence of the auditor of state, attorney-general, and one or more judges of the supreme court, have done their duty. This is so clear, that it can hardly be imagined that further objection would be made to counting 436 votes for Washburn and 135 votes for Donnelly, cast in the county of Polk, as to which there is no other objection than the fact that they were canvassed with the votes from Kittson County. If the return should be defective as to Kittson County, it is wholly unobjectionable as to Polk County. There is absolutely no attempt by contestant's notice or in his argument to deprive Mr. Washburn of a majority of 301 votes in the county of Polk, and it is difficult to properly characterize the attempt to do so now.

In conclusion, it may be proper to say on the subject of the vote of the counties of Polk and Kittson that, notwithstanding the fact that extended oral arguments were made by the contestant, no objection was made throughout them to counting the vote of these two counties on the ground that it was not properly canvassed and returned.

The returned majority for W. D. Washburn is 3,013. If the views of the members of the committee who are in favor of unseating him should be adopted, then there should be added to this majority the unreturned votes cast for him from the counties of Stearns (144) and Morrison (68)= 212, which would increase his majority to 3,225. On this theory of the case there should be deducted, on account of unreturned votes claimed to have been cast for Donnelly in the counties of Stearns (396), Morrison (165), and Douglas (61), a total of 622 votes, which would reduce Mr. Washburn's majority to 2,603.

The entire majority for Mr. Washburn in Crookston (168), Polk County, and in Tamarack and Two Rivers precinct (181), (his whole vote in Kittson County), and all the alleged bribed votes (22), as found by a portion of the committee, aggregate 371 votes, which, if deducted from the number ascertained as above, would still leave the sitting member with a majority of 2,232, as to which no bribery is pretended, and as to no portion of which can there be any reasonable or possible pretense for a valid or legal objection.

In the light of the law, and giving due weight to all competent testimony in the case, not even a technical ground can be found for rejecting any part of a majority thus found.

The members of the committee who concur in the annexed resolution declaring that W. D. Washburn was duly elected, &c., do not agree that his true majority is only 2,232.

Ten members (two-thirds) of the whole committee concur in holding that Ignatius Donnelly was not elected, and that he is not entitled to a seat in the House. It seems to the members of the committee who, without qualification, sign this report that it is a gross inconsistency to not find as a logical consequence that W. D. Washburn was duly elected to his seat in the House of Representatives.

A resolution declaring that Ignatius Donnelly is not entitled to a seat

in the House of Representatives is reported in accordance with the instructions of the committee.

The members of the committee who sign this report concur generally in the views therein expressed and in recommending for adoption by the House of the following resolutions:

Resolved, That William D. Washburn is entitled to retain his seat as a member of the Forty-sixth Congress of the United States as Representative of the third Congressional district of the State of Minnesota.

Resolved, That Ignatius Donnelly is not entitled to a seat as a member of the Forty-sixth Congress as Representative from the third Congressional district of the State of Minnesota.

J. WARREN KEIFER.
E. OVERTON, JR.
W. H. CALKINS.
JOHN H. CAMP.
W. A. FIELD.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1792.

PURCHASE OF A REFRIGERATING SHIP.

JUNE 16, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GOODE, from the Select Committee on the Origin, Introduction, &c., of Epidemic Diseases, submitted the following

REPORT:

[To accompany bill H. R. 2875.]

The Committee on Epidemic Diseases, to whom was referred House bill 2875, have had the same under consideration, and report it back with a favorable recommendation.

Your committee are of opinion that the amount of money appropriated by the act of April 18, 1879, would be beneficially and wisely expended in testing the important experiment of disinfecting vessels and cargoes by means of the refrigerating ship provided for in said act.

46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1793.

CLAUDE H. MASTEN.

JUNE 16, 1880.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SAMFORD, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1088.]

The Committee on Claims, to whom was referred the claim of Claude H. Masten, surviving partner of firm of Le Vert & Masten, for himself and in behalf of Octavia Le Vert's heirs, report as follows:

In the Forty-fifth Congress the Senate Committee on Claims made a report on this claim, from which the following extracts are taken:

This claim has been before Congress for several years. During the second session of the Forty-third Congress the same was referred to the Senate Committee on Claims, and February 1, 1875, Mr. Wright, then chairman of the committee, submitted a report on behalf of the committee to the Senate. In that report the following language is used, which is adopted as part of this report:

"The claim is made up of rent of hospital for six months, from the 15th of April to the 15th of October, 1865, $1,500; damages to the same by United States troops, $510; cash paid for survey, $25; six beds, mattresses, &c., $50; making $2,085.

"The claimant asserts that occupation was taken of this hospital by Union forces in the spring of 1865, for the use of sick and wounded officers, Doctor Abidie, chief medical officer of General Canby's command, thinking it desirable to secure the use of it for such purposes.

"He alleges that he had the voluntary assurance of the doctor that a liberal rent would be paid and the property restored in good repair. He alleges that, with the expectation that it would then be turned over to the firm on July 1st of that year, an account was made up to that date, including the estimated cost of repairs, which was made by a board of survey, and that this was done on the suggestion of the commanding officer, General Kilby Smith. That, instead of being thus turned over, it was taken possession of by the Quartermaster-General's Department, and not finally released to him until about the middle of October.

"In support of his claim the evidence, without recapitulating it, establishes the following facts:

"The building was used as a medical hospital from the time possession was taken in April to some time in June, 1865, about two months. After that it appears to have passed into the control of the Quartermaster's Department, such control continuing until about the middle of October, of the same year.

"The claim for rent from the 15th of April to the 28th of June, amounting to the sum of $500, for damages done to the building and for furniture removed, and expenses in estimating damages, amounting to $585, was presented to the proper department, and payment thereof recommended by Colonel Wickersham, chief quartermaster of the Department of Alabama, his indorsement upon the papers reciting as follows:

"'I am satisfied that the claimant is justly entitled to a fair compensation for the use, by the government, of the Le Vert hospital, of Mobile, and also that the rate of rent, &c., claimed, is reasonable and just.'

"Captain McIntosh, in referring the claim to Colonel Wickersham, strongly recommended that the claim be allowed. General Canby, of the date of November 14, 1866, says 'that this property was excepted from seizure and occupation, on the capture of Mobile, on account of reputed royalty and kindness to Union prisoners of one of the owners, Mrs. Le Vert, but was subsequently rented by the medical director of my command as a hospital for sick and wounded officers. It was expressly excepted from

capture and protected by General Order No. 20, from the headquarters of the Army Division of West Mississippi. I recommend that the sum charged as rent be allowed and paid. The sum charged as damages cannot be allowed in that shape, but it is recommended that the Quartermaster's Department be directed to restore the property to the condition in which it was found when taken; two-thirds of the expenses to be borne by the government, and the other third by claimants, or that a proportional allowance be paid in lieu of this. The charge made by the board of survey being in the interest of the claimants, should be borne by them.'

"These papers being laid before the Quartermaster-General, he held that 'Mobile having been a hostile city captured by our troops from an enemy who did not surrender on terms, but was driven out by force of arms, everything in it was prize of war, as at Atlanta, &c. It does not appear that the military department should order payment of any sum under such circumstances.'

"On the 20th of November, 1866, the claim, as above recommended by the officers, was, by the order of the Secretary of War, referred to the claims commission.

"On the 16th of March, 1867, this commission decided that it appeared from the papers and evidence that this claim comes within the prohibitory clauses of the act of Congress approved July 4, 1864, as amended and construed by the act of the Thirty-ninth Congress, entitled 'An act to declare the sense of an act entitled 'An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence furnished to the Army of the United States,'' received by the President on the 9th day of February, 1867, and it was therefore rejected.

"As to the value of the use of the premises, it may be conceded that the fair rental, after possession was taken by the Quartermaster's Department, was that fixed by Colonel Wickersham in his indorsement, before set forth.

"In addition to the evidence of loyalty above set forth, we find the following (here we quote from the statement of one witness, which presents the facts substantially as they are detailed by others):

"Mr. C. F. Moulton, at one time city judge, and now mayor of Mobile, says: 'I was well acquainted with Doctor Le Vert; I knew him about fifteen years prior to his death. He died during the late war, after a most protracted illness. During his illness I was frequently with him. In sentiment he was a thorough Union man; and with regard to Madam Le Vert, I can say, with the utmost truthfulness, that no lady in America surpassed her in her real love for the Union of these States; and for this devotion, none but herself and her God can know the suffering she has endured. On the 12th day of April, 1865, as General Granger entered the city of Mobile at the head of the United States forces, her house was opened for his reception. For several days the chief officers of the Army remained at her house, it being the only instance of hospitality being offered to Union Army officers then in this city. Soon thereafter, when the late Chief-Justice Chase and daughter visited Mobile, they were hospitably entertained by Madam Le Vert and daughter.

"'I have known Dr. Masten for twenty years. He is a gentleman of fine culture, unobtrusive, and devoting all his time and thought to a profession that he honors. Dr. Masten deplored the late war. Before, during, and since that memorable struggle, he has not, within my knowledge, done any act inconsistent with a Union sentiment. To my personal knowledge he has not, within the past twenty years, taken any other part in politics than to vote, and then for the best men irrespective of party. He is a just man, and a good citizen.'"

It will be noticed that the author of the foregoing committed an error in his calculation of rent. Instead of its amounting to $1,500 for the six months it was occupied, it only amounts to $1,200, inasmuch as the rate per month charged and found due is only $200 per month.

In addition to the foregoing, it is shown from the evidence in the case that the same was referred, August 14, 1865, by Brevet Major-General John F. Miller to Brig. Gen. Thomas Kilby Smith, whose headquarters were at Mobile, Ala. In General Smith's report he says,:

"This case seems to be a most deserving one.

* * * * * * *

"I would earnestly recommend the appointment of a board of officers to determine the amount of this claim, or that such other action be had as will lead to its speedy settlement."

Subsequently it was referred to Col. M. D. Wickersham, chief quartermaster, Department of Alabama, at Mobile, by Brig. Gen. J. Q. Dana, and by Colonel Wickersham referred to Capt. Alexander McIntosh, assistant quartermaster, for investigation and report. Captain McIntosh in his report says that he "finds that the statements made by Dr. Masten in regard to the same are substantially correct," and, as heretofore stated, "strongly recommend that the claim be allowed"

From this evidence the committee find the following facts: that her property was "excepted from seizure and occupation in the capture of Mobile," and "was subse-

quently rented by the medical director of the command of General Canby, and by his previous order or subsequent ratification."

The property was in the possession of the medical director for hospital purposes for two and one-half months from April 15, 1865, to 28th day of June, same year; subsequently it was turned over to the Quartermaster-General's Department, and thus remained until October 12, 1865, when, by order of General Canby, it was returned to the owners, the government having possession of it six months, which, at a rental of $200 per month, aggregates $1,200. As to the injury to the property the committee decline to recommend any allowance, holding that the amount allowed for rent covers the whole amount due from the government.

In view of all the facts in the case, your committee report back said Senate bill, with the recommendation it do pass.

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